UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re: CRYSTAL CATHEDRAL MINISTRIES, Debtor.	Case No. 2:12-bk-15665-RK Chapter 11 MEMORANDUM DECISION ON MOTION OF PLAN AGENT AND REORGANIZED DEBTOR FOR JUDGMENT ON PARTIAL FINDINGS RE: OBJECTIONS TO CLAIMS OF DR. ROBERT H. SCHULLER, ROBERT HAROLD, INC., ARVELLA SCHULLER, TIMOTHY MILNER, AND CAROL S. MILNER

The above-captioned bankruptcy case came for hearing on November 16, 2012 before the undersigned United States Bankruptcy Judge on the motion of Karen S. Naylor, Plan Agent, and Crystal Cathedral Ministries, Reorganized Debtor, for judgment on partial findings pursuant to Rule 52(c) of the Federal Rules of Civil Procedure ("Civil Rules" or "Fed. R. Civ. P.") as incorporated by reference in Rules 7052 and 9014 of Federal Rules of Bankruptcy Procedure with respect to the contested matters of the objections of Plan Agent and Reorganized Debtor to the claims of Claimants Dr. Robert H. Schuller, Arvella Schuller, Robert Harold, Inc., Timothy Milner and Carol S. Milner

("Claimants"). Todd C. Ringstad and Nanette D. Sanders, of the law firm of Ringstad & Sanders LLP, appeared for Plan Agent. Marc J. Winthrop, of the law firm of Winthrop Couchot Professional Corporation, appeared for Reorganized Debtor. Arnold P. Lutzker, of the law firm of Lutzker and Lutzker, also appeared for Reorganized Debtor. Carl L. Grumer and Matthew S. Urbach, of the law firm of Manatt, Phelps & Phillips, LLP, appeared for Claimants.

The objections to the claims are contested matters within the meaning of Rule 9014 of the Federal Rules of Bankruptcy Procedure, and the proceedings are before the court (or bench) and not a jury. Fed. R. Bankr. P. 3007 and 9014; *In re Southern California Plastics, Inc*., 165 F.3d 1243, 1248 (9th Cir. 1999). The court set a trial of these contested matters for November 1, 2, 7, 8, 9, 14, 15, 16, 29 and 30, 2012, and thus far, the court has conducted trial proceedings on November 1, 2, 7, 8, 14, 15 and 16, 2012.

In the trial of these contested matters, Claimants presented their case-in-chief on November 2, 7, 8, 14 and 15, 2012, and rested after presentation of their case-in-chief on November 15, 2012. In their case-in-chief, Claimants called a number of witnesses and offered numerous exhibits into evidence, which were received subject to the court's evidentiary rulings on objections of Plan Agent and Reorganized Debtor. After Claimants rested, on November 16, 2012, Plan Agent and Reorganized Debtor made their joint motion under Civil Rule 52(c) for judgment on partial findings as to all claims. At the hearing on the motion on November 16, 2012, the court heard extensive argument by the parties.

Under Civil Rule 52(c), in a nonjury court (or bench) trial, a party may move for judgment as a matter of law where an issue has been fully heard and a claim or defense cannot be maintained without a favorable finding on that issue. Fed. R. Civ. P. 52(c); *Ritchie v. United States,* 451 F.3d 1019, 1022-1023 (9th Cir. 2006). In ruling on a motion pursuant to Fed. R. Civ. P. 52(c), the trial court may "weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance lies." *International Union of Operating Engineers, Local Union 103 v. Indiana Construction Corporation*, 13 F.3d 253,

257 (7th Cir. 1994). In providing for a motion to enter judgment on partial findings, Civil Rule 52(c) expressly authorizes the trial court to resolve disputed factual issues and to make factual findings in accordance with its own view of the evidence. *Ritchie v. United States,* 451 F.3d at 1023.

After considering the arguments of the parties, the evidence received at the trial of these contested matters and the other papers and pleadings relating to these contested matters, the court hereby issues this memorandum decision setting forth its findings of fact and conclusions of law on the motion for judgment on partial findings, and grants the motion.

The court does not discuss the history and background of Debtor and Claimants in detail because the parties are familiar with these facts. The memorandum decision contains some redundancies in the legal analysis because although these contested matters were jointly tried, the court discusses the objections by claimant so that the parties need not refer to the discussion of the claims of other claimants to understand the court's rulings as to a particular claimant.

I. CLAIMS OF DR. ROBERT H. SCHULLER AND ROBERT HAROLD, INC.

A. Claim No. 244-1 of Dr. Robert H. Schuller: $55,226.27 for "Housing allowance and breach of contract"

Claimant Dr. Robert H. Schuller ("Dr. Schuller") filed a proof of claim, Claim No. 244-1, on February 28, 2011, asserting a claim in the amount of "$55,226.27 +." This claim was submitted on a one-page proof of claim, stating that the amount of the claim as of the case filing date was "$55,226.27 +," or that amount, plus an unknown amount, and that the basis for the claim was "Housing allowance and breach of contract." The proof of claim made no allegations of fact to state a factual basis of the claim.

The court initially finds that Claimant Dr. Schuller was an insider of the debtor within the meaning of 11 U.S.C. §§ 101(31)(B)(i), (iii) and (vi) because he was a director and person in charge of Debtor as the chairman of the board of directors of Debtor, the senior pastor of the Debtor, and the founding pastor of Debtor, and because as the

spouse of Arvella Schuller, he was a relative of a director of Debtor at the times relevant to this contested matter of the objection to this claim. *Trial Transcript,* November 7, 2012, at 87:7-25 (Testimony of Dr. Robert H. Schuller); *Trial Transcript,* November 7, 2012, at 5:22-6:13, 7:11-18 (Testimony of Arvella Schuller); *Trial Declaration of Robert H. Schuller* at 11:11-12; *Transition Agreement, Exhibit P38*; *Joint Pretrial Order (R.H. Schuller and Robert Harold, Inc.)*, ¶ I.B.8.

A claim for prepetition services of an insider of the debtor may not exceed the reasonable value of such services under 11 U.S.C. § 502(b)(4), and an insider's dealing with a bankrupt corporation must be "subject to rigorous scrutiny." *Pepper v. Litton,* 308 U.S. 295, 306 (1939); *see also,* 2 Resnick and Sommer, *Collier on Bankruptcy,* ¶ 101.31 at 101-140 (16th ed. 2012) ("An 'insider' generally is an entity whose close relationship with the debtor subject any transaction made between the debtor and such entity to heavy scrutiny."). Although the court finds that Claimant Dr. Schuller was an insider of the debtor, Plan Agent and Reorganized Debtor concede the allowance of a claim of R.H. Schuller for prepetition services in the form of a housing allowance in the amount of $55.226.27. Accordingly, this claim should be allowed as a general unsecured claim in the amount of $55,226.27 and will be allowed as part of Claim No. 332-1 pursuant to 11 U.S.C. § 502(b)(7). Payment of this amount as Claim No. 244-1 and Claim No. 332-1 would result in duplicate payment and can be allowed only once.

The claim for breach of contract based on the so-called Transition Agreement for prepetition services rendered by Claimant Dr. Schuller in Claim No. 244-1 is disallowed, except to the extent that it is allowed pursuant to Claim No. 332-1.

B. Claim No. 245-1 of Robert Harold, Inc., and Dr. Robert H. Schuller for an Unknown amount of claim for "Copyright infringement"

Claimants Robert Harold, Inc. ("RHI"), and Dr. Robert H. Schuller ("Dr. Schuller") filed a proof of claim, Claim No. 245-1, on February 28, 2011, asserting a claim in an unknown amount based on copyright infringement. This claim was submitted on a one-page proof of claim, stating that the amount of the claim as of the case filing date was

"$ Unknown – subject to accounting" and that the basis for the claim was "Copyright Infringement." The proof of claim made no allegations of fact to state a factual basis of the claim.

Rule 3001(f) of the Federal Rules of Bankruptcy Procedure provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). Rule 3001(c) of the Federal Rules of Bankruptcy Procedure provides that "[w]hen a claim . . . is based on a writing, the original or duplicate shall be filed with the proof of claim." Fed. R. Bankr. P. 3001(c). Pursuant to 11 U.S.C. § 502, the court must determine the allowance or disallowance of a claim after an objection is made. Specifically, 11 U.S.C. § 502(a) and (b) provide in relevant part: "(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed unless a party in interest . . . objects. (b) . . . if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition. . . ." 11 U.S.C. § 502(a) and (b).

Although Fed. R. Bankr. P. 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim," this presumption of the validity of a claim does not arise if the proof of claim itself does not set forth the necessary facts to establish the claim. *Wright v. Holm (In re Holm),* 931 F.2d 620, 623 (9th Cir. 1991). In *Holm,* the United States Court of Appeals for the Ninth Circuit stated the parties' respective burdens of proof as follows:

> Inasmuch Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and amount of the claim is that of the objector to the claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish the claim and are not self-contradictory, they prima facie establish the claim. Should objection be taken, the objector is

> then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant.

In re Holm, 931 F.2d at 623.

The Bankruptcy Appellate Panel of the Ninth Circuit stated the applicable burdens of proof as follows:

> The burden of proof for claims brought in the bankruptcy court under 11 U.S.C. § 502(a) rests on different parties at different times. Initially, the claimant must allege facts sufficient to support the claim. If the averments in his filed claim meet this standard of sufficiency, it is "prima facie" valid. In other words, a claim that alleges facts sufficient to support a legal liability to the claimant satisfies the claimant's initial obligation to go forward. The burden of going forward then shifts to the objector to produce evidence sufficient to negate the *prima facie* validity of the filed claim. . . . If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The burden of persuasion is always on the claimant.

Ashford v. Consolidated Pioneer Mortgage (In re Consolidated Pioneer Mortgage), 178 B.R. 222, 226 (9th Cir. BAP 1995), *citing inter alia, In re Allegheny International, Inc.,* 954 F.2d 167, 173-174 (3rd Cir. 1992) and *In re Holm,* 931 F.2d at 623.

The court finds that Claim No. 245-1 is not entitled to a presumption of correctness as to the validity and amount of the claim under Rule 3001(f) of the Federal Rules of Bankruptcy Procedure because no amount of the claim is stated in the proof of claim and the proof of claim fails to allege facts sufficient to support any legal liability of Debtor to the claim. Accordingly, the court concludes that Claimants RHI and Dr. Schuller have the burden to prove the validity of the claim by a preponderance of the evidence.

Moreover, as discussed previously, the court finds that Dr. Schuller was an insider of the Debtor pursuant to 11 U.S.C. § 101(31). The court also finds that Claimant RHI was an insider of the debtor within the meaning of 11 U.S.C. § 101(31) because it is a corporation wholly owned and controlled by insiders of Debtor, Dr. Schuller, a director and person in charge of Debtor as the chairman of the board of directors of Debtor, the senior pastor of the debtor, and the founding pastor of Debtor, and A. Schuller, another director of Debtor, at the times relevant to this contested matter of the objection to this claim. *Trial Transcript,* November 7, 2012, at 87:23 – 88:2 (Testimony of Dr. Robert H. Schuller); *Trial Declaration of Robert H. Schuller* at 5:24-25, 11:11-12; *Transition Agreement, Exhibit P38; Joint Pretrial Order (Dr. Robert H. Schuller and Robert Harold, Inc.),* ¶ I.B.8; *Joint Pretrial Order (Arvella Schuller),* ¶¶ I.B.8 and I.B.9; *see also,* 2 Resnick and Sommer, *Collier on Bankruptcy,* ¶ 101.31 at 101-142 (16th ed. 2012) ("Because the definition of an insider is nonexclusive, courts have worked to refine the category of 'nonstatutory insiders.' The category includes those individuals or entities whose relationship with the debtor is so close that their conduct should be subject to closer scrutiny than those dealing with the debtor at arm's length."). An insider's dealing with a bankrupt corporation must be "subject to rigorous scrutiny." *Pepper v. Litton,* 308 U.S. 295, 306 (1939); *see also,* 2 Resnick and Sommer, *Collier on Bankruptcy,* ¶ 101.31 at 101-140 ("An 'insider' generally is an entity whose close relationship with the debtor subject any transaction made between the debtor and such entity to heavy scrutiny.").

As discussed herein, Claimants RHI and Dr. Schuller have failed to meet their burden of proving the validity and amount of his claim by a preponderance of the evidence. *In re Southern California Plastics, Inc*., 165 F.3d 1243, 1248 (9th Cir. 1999).

Although not alleged in the proof of claim itself, Claim No. 245-1, Claimants RHI and Dr. Schuller in their opposition to the objection of Plan Agent and Reorganized Debtor to this claim contended that "Debtor made uses of Creditors' intellectual property beyond the scope of any license, including, for example, offering it over the Internet." In the opposition to the objection, Claimants Dr. Schuller and RHI cited the declaration of

Dr. Schuller filed on or about October 18, 2011 for details of the claim. In Claimant Dr. Schuller's declaration filed on October 18, 2011, he stated: " . . . I have granted to the Ministry a royalty free license to make certain uses of my intellectual property. However, the Ministry has made uses of my books and other writings of mine for which I or my corporation, Robert Harold, Inc., holds the copyright, that are outside the scope of that license. For example, some of my intellectual property has been made available by the Ministry for free over the Internet. In addition, portions of my works have been incorporated and used by the Ministry in other works, without my approval or consent. Such uses constitute infringement of my copyrights and those of Robert Harold, Inc. I do not know the extent of those uses without an accurate accounting from the Ministry, so I am unable to calculate my damages at this time. Through my daughter and my attorney, I have asked the Ministry for that information, but I have not yet received it." Claimants assert that "[t]he total amount of Creditors' claim is unknown at this time, subject to an accounting and other information from the Debtor."

Regarding the federal statutory scheme in the Copyright Act for protection of copyrights, the United States Supreme Court has stated:

> The Constitution grants Congress the power "[t]o promote the Progress of Science and useful Arts, by secured for limited Times to Authors . . . the exclusive Right to . . . their . . . Writings." Art. I, § 8, cl. 8. Exercising this power, Congress has crafted a comprehensive statutory scheme governing the existence and scope of "[c]opyright protection" for "original works of authorship fixed in any tangible medium of expression." 17 U.S.C. § 102(a). This scheme gives copyright owners "the exclusive rights" (with specified statutory exceptions) to distribute, reproduce, or publicly perform their works. § 106. "Anyone who violates any of the exclusive rights of the copyright owner as provided in the Act "is an infringer of the copyright." § 501(a). When such infringement occurs, a

> copyright owner "is entitled, subject to the requirements of section 411, to institute an action" for copyright infringement. § 501(b).

Reed Elsevier, Inc. v. Muchnick, 130 S. Ct. 1237, 1241 (2010) (emphasis omitted).

With respect to copyright ownership, the Supreme Court has stated:

> The Copyright Act of 1976 provides that copyright ownership "vests initially in the author or authors of the work." 17 U.S.C. § 201(A). As a general rule, the author is the party who actually creates the work, that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection. § 102. The Act carves out an important exception, however, for "works made for hire." If the work is for hire, "the employer or other person for whom the work was prepared is considered the author" and owns the copyright, unless there is a written agreement to the contrary. § 201(b). Classifying a work as "made for hire" determines not only the initial ownership of its copyright, but also the copyright's duration, § 302(c), and the owners' renewal rights, § 304(a), termination rights, § 203(a), and right to import certain goods bearing the copyright, § 601(b)(1).

Community for Creative Non-Violence v. Reid, 490 U.S. 730, 737 (1989), *citing,* 1 M. Nimmer & D. Nimmer, *Nimmer on Copyright,* § 503[A] at 5-10 (1988); *see also, S.O.S., Inc. v. Payday, Inc.,* 886 F.2d 1081, 1085 and n. 4 (9th Cir. 1989). As further explained by the United States Court of Appeals for the Ninth Circuit, "Copyright protection subsists from the moment the work is 'fixed in any tangible medium of expression.' 17 U.S.C. § 102(a)." *S.O.S., Inc. v. Payday, Inc.,* 886 F.2d at 1085. "Registration is not a prerequisite to a valid copyright, although it is a prerequisite to suit. 17 U.S.C. § 408(a), § 411." *Id.* at 1085 and n. 4; *see also, Reed Elsevier, Inc. v. Muchnick*, 130 S. Ct. at 1241 ("Section 411(a) provides, *inter alia* and with certain exceptions, that "no civil action for infringement of the copyright in any United States work shall be instituted until

preregistration or registration of the copyright claim has been made in accordance with this title.").

To prevail on their claim of copyright infringement, Claimants must prove: (1) ownership of the allegedly infringed material; and (2) the alleged infringer engaged in "copying," of the allegedly infringed material, or in other words, violated at least one exclusive right granted to a copyright holder under 17 U.S.C. § 106. *S.O.S., Inc. v. Payday, Inc.,* 886 F.2d at 1085 and n. 3; *A&M Records, Inc. v. Napster, Inc.,* 239 F.3d 1004, 1014 (9th Cir. 2001). "The word "copying" is shorthand for the infringing of any of the copyright owner's five exclusive rights, described at 17 U.S.C. § 106", which includes the right to distribute copies of the copyrighted work. *S.O.S., Inc. v. Payday, Inc.,* 886 F.2d at 1085 n. 3.

Based on the contentions made by Claimants RHI and Dr. Schuller in opposition to the objection of the Plan Agent and Reorganized Debtor to this claim, the court construes Claim No. 245-1 filed by these claimants to assert that Debtor allegedly infringed on the copyrights of Dr. Schuller by distributing his copyrighted works outside of the scope of a license that he granted to Debtor and otherwise without his approval or consent in violation of his exclusive right to distribute his works under 17 U.S.C. § 106. To prevail on this claim, Claimants must prove: (1) ownership of copyright in the allegedly infringed materials; and (2) "copying" of protectable expression by the alleged infringer beyond the scope of the license. *S.O.S., Inc. v. Payday, Inc.,* 886 F.2d at 1085 and n. 3.

The court finds that although Claimant Dr. Schuller has shown by a preponderance of the evidence that he authored numerous books for which he registered copyrights for such books—which is not disputed by Plan Agent and Reorganized Debtor—he has not established by a preponderance of the evidence that the Debtor infringed on his copyrights or violated the terms of the broad license he gave Debtor for use of his works. Claimant Dr. Schuller failed to identify, let alone show, the specific acts of infringement of his copyrights by Debtor, such as unauthorized sales by Debtor of his copyrighted works. *See Trial Declaration of Dr. Robert H. Schuller* at 2:17-21. This

finding is supported by Dr. Schuller himself in his trial testimony. Indeed, Dr. Schuller admitted in his trial testimony: (1) that Debtor did not ever make use of his intellectual property in a way that violated any permission that he had given to Debtor; (2) that Debtor never infringed upon use of his intellectual property; (3) that all uses of his intellectual property by Debtor were with his consent; and (4) that he could not recall any instance, to his knowledge, that Debtor violated any restriction that he placed on use of his intellectual property. *Trial Transcript,* November 7, 2012, at 109:16-25, 114:20 – 115:1 (Testimony of Dr. Robert H. Schuller).

To the extent that Debtor used Claimant Dr. Schuller's copyrighted materials, the preponderance of the evidence demonstrates that Debtor used such materials under an express license granted by him. Specifically, Dr. Schuller granted Debtor a broad license to use his copyrighted works for the benefit of Debtor for non-profit purposes. Dr. Schuller testified that Debtor could use his materials "without problems, as long as they did not sell that information to competitors" and without any expectation of royalties or compensation for the use of his materials, and that there were no restrictions from him to use his materials for the purpose of raising funds for the ministry (i.e., the Debtor). *Trial Transcript,* November 7, 2012, at 98:16 – 100:18, 133:15 – 135:15, 140:21-23 (Testimony of Dr. Robert H. Schuller). Thus, Claimant Dr. Schuller has not proven by a preponderance of the evidence that debtor used his copyright works in violation of the license as shown by his trial testimony that Debtor did not ever make use of his intellectual property in a way that violated any permission that he had given to Debtor and that he could not recall any instance that Debtor violated any such restriction. *Trial Transcript,* November 7, 2012, at 109:16-25, 114:20 – 115:1, 152:4-24 (Testimony of Dr. Robert H. Schuller). Despite Claimant Dr. Schuller's *post hoc* testimony in his redirect testimony at trial that his advance approval was required for use of his copyrighted materials, the court finds that based on Claimant's testimony on cross-examination and in actual practice, such advance approval was not required as a condition of the broad license that claimant granted to Debtor to use his copyrighted works. *Trial Transcript,*

November 7, 2012, at 142:12 – 143:3, 144:23 – 146:20 (Testimony of Dr. Robert H. Schuller).

Additionally, Claimant Dr. Schuller has not established an amount of damages for any alleged infringement of his copyrights by a preponderance of the evidence. Under the Copyright Act, 17 U.S.C., a plaintiff may recover actual damages as a result of the alleged infringement, and may recover profits attributable to the infringement. 17 U.S.C. § 504(a). The language of the statute indicates that a causal relationship must exist between the infringement and the monetary remedy sought by plaintiff. *Polar Bear Productions, Inc. v. Timex Corp.,* 384 F.3d 700, 708 (9th Cir. 2004). "Under [17 U.S.C.] § 504(b), actual damages must be suffered 'as a result of the infringement,' and recoverable profits must be 'attributable to the infringement.'" *Id.* The plaintiff "must establish this causal connection, and . . . this requirement is akin to tort principles of causation and damages." *Id.* Claimant Dr. Schuller offered little, if any, evidence in his case-in-chief of his damages or the profits allegedly attributable to any infringement by Debtor. This situation is probably best explained by Dr. Schuller's trial testimony that Debtor never infringed upon use of his intellectual property. *Trial Transcript,* November 7, 2012, at 109:16-25, 114:20 – 115:1, 152:4-24 (Testimony of Dr. Robert H. Schuller). Accordingly, Claimant Dr. Schuller failed to meet his burden of proving by a preponderance of the evidence the amount of actual damages and the amount of recoverable profits under the Copyright Act and the Bankruptcy Code and Rules, and his copyright infringement claim should be disallowed for failure of proof on this ground. 17 U.S.C. § 504(b); 11 U.S.C. § 502(a); Fed. R. Bankr. P. 3001; *Polar Bear Productions, Inc. v. Timex Corp.,* 384 F.3d at 708; *In re Holm,* 931 F.2d at 623.

In addition, with respect to the Hour of Power intellectual property, Claimant Dr. Schuller has not satisfied the precondition of registering his copyrights with the United States Copyright Office in order to maintain a civil action for infringement, which applies to the filing of a proof of claim in a bankruptcy case. 17 U.S.C. § 411(a); *In re Idearc, Inc*., 2011 WL 203859 (Bankr. N.D. Tex. 2011); *see also*, *Cosmetic Ideas, Inc. v.*

IAC/Interactivecorp., 606 F.3d 612, 614-615 (9th Cir. 2010).[1] Indeed, the filing of a proof of claim in a bankruptcy case is tantamount to filing a civil complaint. *Nortex Trading Corporation v. Newfield*, 311 F.2d 163, 164 (2nd Cir. 1962); *In re Simmons*, 765 F.2d 547 (5th Cir. 1985); *Matter of Continental Airlines*, 928 F.2d 127, 129 (5th Cir. 1991); *see also, In re Idearc, Inc*., 2011 WL 203859 at *1, 11. There is no evidence showing that Claimant Dr. Schuller registered copyrights in his name for the Hour of Power or that he ever attempted to file an application with the Copyright Office to register a copyright related to the Hour of Power. Accordingly, Claimant Dr. Schuller may not assert a claim for copyright infringement for lack of federal copyright registration in his name for the Hour of Power. Moreover, Claimant Dr. Schuller is not entitled to any statutory damages under the Copyright Act for infringement of any Hour of Power copyrights due to his failure to register any copyrights for such works.

Also, with respect to the Hour of Power intellectual property, to the extent that Claimant Dr. Schuller claims any rights to such property, he has not proven by a preponderance that he is the owner of the copyrights to such property. First, as Dr. Schuller admitted in his trial testimony, he does not own the rights to the Hour of Power. and that Debtor owned the rights. *Trial Transcript,* November 7, 2012, at 109:7-15 (Testimony of Dr. Robert H. Schuller). Second, the preponderance of the evidence otherwise shows that the Hour of Power intellectual property was works for hire; that is, to the extent that Claimant Dr. Schuller created such property, he created such property during the scope of his employment with Debtor. *Community for Creative Non-Violence v. Reid*, 490 U.S. at 742 n. 8. Copyright ownership vests initially in the "author of the

[1] In this regard, the court does not agree with the Claimants' arguments in their supplemental briefing filed on November 15, 2012 that *Idearc* is distinguishable and unhelpful. *Claimants' Brief re Copyright Registration Requirement,* filed on November 15, 2012. In *Idearc*, the court granted the alleged copyright infringer's motion for summary judgment as to claims for infringement of works not registered with the Copyright Office. In this regard, it should be noted that summary judgment was granted despite the filing of a proof of claim by the copyright infringement plaintiff in the *Idearc* bankruptcy case. 2011 WL 203859 at *1, 11.

work." 17 U.S.C. § 201(a). However, if a work is "for hire," the "employer or other person for whom the work was prepared is considered the author" and owns the copyright. 17 U.S.C. § 201(b). Section 101 of the Copyright Act provides two circumstances in which a work is "for hire": (1) when the work is prepared by an employee within the scope of his employment; or (2) when the work was specially ordered or commissioned for use as a contribution to a collective work. 17 U.S.C. § 101.

To determine whether a copyrighted work is a "work for hire" under the Copyright Act, the court must first determine, using general principles of agency law, whether the work was prepared by an employee or an independent contractor. *Community for Creative Non-Violence v. Reid*, 490 U.S. at 750-751. If the court finds that the work was prepared by an employee, the court must then determine that the work was made during the scope of the employee's employment. *Id.*; *see also,* 17 U.S.C. § 101.

To determine "employee" status for purposes of the Copyright Act, the Supreme Court explained that courts must "consider the hiring party's right to control the manner and means by which the product is accomplished." *Community for Creative Non-Violence v. Reid*, 490 U.S. at 751. The Supreme Court then enumerated the following non-exhaustive factors to determine the hiring party's right to control: (1) the skill required; (2) the source of the instrumentalities and tools; (3) the location of the work; (4) the duration of the relationship between the parties; (5) whether the hiring party has the right to assign additional projects to the hired party; (6) the extent of the hired party's discretion over when and how long to work; (7) whether the hiring party is in business; (8) the provision of employee benefits; (9) and the tax treatment of the hired party. *Id.*

Based on these factors enumerated by the Supreme Court in *Reid,* the court finds that Dr. Schuller was an employee of the Debtor. Although Dr. Schuller has substantial skill in writing and delivering messages (i.e., sermons) in harmony with the purpose of the Debtor, the source of his "instrumentalities and tools" were all provided by Debtor, and the location of the work at Debtor's premises. Dr. Schuller delivered all of his messages from the pulpit at Debtor's premises, including the Crystal Cathedral from 1980 to 2011.

Trial Transcript, November 7, 2012, at 14:16-16:18 (Testimony of Arvella Schuller); *Trial Declaration of Charles Todd* at 3:23-4:1, 4:12-4:14. All filming and recording of the Hour of Power television program featuring Dr. Schuller's messages occurred on Debtor's premises, and all means of production of the Hour of Power program were provided by Debtor who paid for the production staff and performers on the program.[2] *Trial Transcript,* November 7, 2012, at 101:10-12 (Testimony of Dr. Robert H. Schuller); *Trial Declaration of Dr. Robert H. Schuller* at 5:22-28, 7:11-13; *Trial Declaration of Charles Todd* at 3:23 – 4:1. Debtor provided Dr. Schuller with an office on its premises at the Crystal Cathedral campus and with support staff paid by Debtor. *Trial Transcript,* November 7, 2012, at 94:6-18 (Testimony of Dr. Robert H. Schuller); *Trial Exhibit P38.* Although Claimants have tried to minimize Dr. Schuller's work efforts on Debtor's premises by suggesting that he wrote many of his messages at home and not on Debtor's premises, Dr. Schuller himself said in his trial testimony that he typically wrote his "messages" (or sermons) at the beach condominium at Laguna Beach, California, which he and his wife donated to Debtor and thus became Debtor's premises. *Trial Transcript,* November 7, 2012, at 101:25 – 106:4 (Testimony of Dr. Robert H. Schuller); *see also, Trial Declaration of Charles Todd* at 4:18-21. Thus, Dr. Schuller as senior pastor of Debtor wrote and delivered his messages (i.e., sermons) on Debtor's premises either on the Crystal Cathedral campus or at the beach condo. *Trial Transcript,* November 7, 2012 at 94:6-18; 101:25 - 106:4 (Testimony of Dr. Robert H. Schuller).

The duration of the relationship between the parties, Dr. Schuller and Debtor, is long. Dr. Schuller was the senior pastor of Debtor since it was incorporated in 1970 to 2006 when he stepped down as senior pastor. *Trial Transcript,* November 7, 2012, at 101:25 – 106:4 (Testimony of Dr. Robert H. Schuller). After 2006, the relationship

[2] During its years on the air after the Crystal Cathedral was built in 1980, Debtor's Hour of Power program was filmed and recorded 52 weeks a year at the Crystal Cathedral (except for a program filed and recorded in the Holy Land, which may have occurred once or twice).

between the parties continued as reflected in the Transition Agreement which designated Dr. Schuller as founding pastor and recognized his continuation as chairman of Debtor's board of directors. *Trial Exhibit P38; Trial Declaration of Dr. Robert H. Schuller* at 9:7-11. Dr. Schuller was involved with the Debtor and its predecessor for over 50 years. *Trial Declaration of Dr. Robert H. Schuller* at 1:3-28, 5:24-25. Dr. Schuller testified that the Hour of Power began in 1972, and from its inception, Dr. Schuller acted as the "executive creator" and "director of the content of the television program," and regularly delivered the messages (or sermons), as senior pastor until 2006. *Trial Declaration of Dr. Robert H. Schuller* at 7:11-18, 8:2-3. *Trial Transcript,* November 7, 2012, at 101:5-9 (Testimony of Dr. Robert H. Schuller). At least since Debtor was incorporated in 1970, Dr. Schuller did not work for anyone else. *Trial Transcript,* November 7, 2012, at 116:9-13 (Testimony of Dr. Robert H. Schuller). This demonstrates a long-lasting relationship between Dr. Schuller and Debtor.

Additionally, the court finds that the Debtor had substantial oversight over Dr. Schuller, in that it was able to assign additional projects to him, and had broad discretion over when and how long Dr. Schuller worked. Dr. Schuller testified that he was expected to deliver a message on each weekly episode of the Hour of Power. *Trial Transcript,* November 7, 2012, at 120:19-121:21 (Testimony of Dr. Robert H. Schuller); *Trial Transcript,* November 7, 2012, at 14:16-15:24 (Testimony of Arvella Schuller);. This indicates that the Debtor had discretion over when and how long Dr. Schuller was to work because he was expected to deliver a message on a weekly basis. Debtor, not Dr. Schuller, employed and paid all other employees who participated in the Hour of Power, that is, Debtor paid all expenses relating to the Hour of Power program, including for salaries for production and other staff, musicians, guest speakers, supplies, travel, and music. *Trial Transcript,* November 2, 2012, at 76:23 - 77:18 (Testimony of Arvella Schuller). Furthermore, Dr. Schuller had many other responsibilities to Debtor independent from the Hour of Power program, including acting as the leader of the church and its congregation, fundraising for the ministries and raising endowment funds

for the maintenance of the church campus. *Trial Transcript, Nov. 7, 2012* at 89:7-90:6 (Testimony of Dr. Robert H. Schuller); *Trial Declaration of Dr. Robert H. Schuller* at 6:5-13, 11:11-18.

The court finds that the Debtor was in business. Specifically, as reflected in its articles of incorporation, Debtor was in the business of televising a "regular Christian religious service for viewing by the general public in order to promulgate the teachings of Jesus Christ." *Articles of Incorporation, Robert H. Schuller Tele Vangelism Association, Incorporated (later renamed Crystal Cathedral Ministries), Trial Exhibit P56.* The Articles indicate that the Debtor, and not the Schullers, had the authority to control and produce the Hour of Power. *Id.* Indeed, all of Dr. Schuller's work in connection with the Hour of Power was subject to the oversight and approval of Debtor's Board of Directors. *Trial Transcript,* November 7, 2012, at 121:3-21, 126-10 – 128:23 (Testimony of Dr. Robert H. Schuller); *Trial Exhibits P38 and P56.*

The method of Dr. Schuller's compensation by Debtor indicates an employment relationship as well. During the time Dr. Schuller was senior pastor of Crystal Cathedral from at least 1970, when Debtor was incorporated, until 2006, he received a salary and housing allowance as compensation for his services to the entire ministry—including the Hour of Power. *Trial Transcript,* November 7, 2012, at 107:15-108:10, 144:23 – 145:10 (Testimony of Dr. Robert H. Schuller). Debtor provided Dr. Schuller with employment benefits, such as a housing allowance and payment of health insurance premiums. *Trial Transcript,* November 7, 2012, at 107:15-108:10, 144:23 – 145:10 (Testimony of Dr. Robert H. Schuller). *Trial Transcript,* November 2, 2012, at 78:9–14 (Testimony of Arvella Schuller). Debtor issued to Dr. Schuller IRS W-2 Forms, Wage and Tax Statements, which an employer gives to an employee and which indicates an employment relationship rather than an independent contractor relationship since employers issue Forms W-2 to employees rather Forms 1099-MISC, Miscellaneous Income Statements, for independent contractors. *See, e.g.*, *Trial Exhibits C366-373, 375-376, 379-380, 395-401.*

Accordingly, based on the factors enunciated in *Reid*, the court finds that Dr. Schuller was an employee of Debtor. The court also finds that Dr. Schuller worked on the Hour of Power as part of the regular scope of his employment, and thus, his works created on the Hour of Power are works for hire which are owned by the employer, Debtor.

Accordingly, this claim is disallowed in its entirety.

C. Claim No. 246-1 of Robert Harold, Inc., in the amount of $223,078.09 for "Contractual payments due"

Claimant Robert Harold, Inc. ("RHI") filed a proof of claim, Claim No. 246-1, on February 28, 2011, asserting a claim in the amount of $223,078.09. This claim was submitted on a three-page proof of claim: the first page of the proof of claim stated that the amount of the claim as of the case filing date was $223.078.09 and that the basis for the claim was "Contractual payments due" and the second and third pages of the proof of claim were an unsigned copy of a letter entitled "Designation as Founding Pastor of Crystal Cathedral Ministries ("CCM") and Transition Agreement" ("Transition Agreement") dated December __, 2005 (date left blank in the copy). The proof of claim made no allegations of fact to state a factual basis of the claim. This proof of claim supersedes the scheduled debt on Schedule F to the bankruptcy petition filed on December 1, 2010 for RHI by Debtor for "Trade/Services" in the amount of $178,462.32. 11 U.S.C. §§ 501(a) and 1111(a).

The claim is disallowed because RHI was not a contractual party to the so-called Transition Agreement upon which the claim is based. The claim relates to prepetition services rendered by Dr. Schuller before the petition date. *Trial Transcript,* November 7, 2012, at 131-18 – 132:12 (Testimony of Dr. Robert H. Schuller); *Trial Declaration of Robert H. Schuller* at 10:25 – 11:10.

Because Plan Agent and Reorganized Debtor stated at trial that they have no objection to this claim if Dr. Robert H. Schuller amends his prepetition claim for contract rejection damages, this claim should be allowed as a general unsecured claim in the

amount of $223,078.09 and will be allowed as part of Claim No. 332-1 pursuant to 11 U.S.C. § 502(b)(7). Payment of this amount as Claim No. 246-1 and Claim No. 332-1 would result in duplicate payment and can be allowed only once. The claim for breach of contract based on the so-called Transition Agreement for prepetition services rendered by Claimant Dr. Schuller in Claim No. 246-1 is disallowed, except to the extent that it is allowed pursuant to Claim No. 332-1.

D. Claim No. 332-1 of Dr. Robert H. Schuller and Robert Harold, Inc. in the amount of $5,059,909.00 for "Rejection of executory contract"

Claimants Dr. Robert H. Schuller ("Dr. Schuller") and Robert Harold, Inc. ("RHI"), filed a proof of claim, Claim No. 332-1, on November 23, 2011, asserting a claim in the amount of $5,059,909.00 based on rejection of an executory contract. This claim was submitted on a seven-page proof of claim: the first page of the proof of claim was an unsigned copy of the proof of claim, which stated that the amount of the claim as of the case filing date was $5,059,909.00 and that the basis for the claim was "Rejection of executory contract (See Attached)," the second page of the proof of claim was a signed copy of the proof of claim, the third page was an attachment computing amounts of housing allowance, insurance and "RHI License Fees" for 15 years in the amounts of $1,784,998, $300,987 and $2,973,924 respectively, the fourth and fifth pages were a copy of a letter entitled "Designation as Founding Pastor of Crystal Cathedral Ministries ("CCM") and Transition Agreement" ("Transition Agreement") dated December 28, 2005, and the sixth and seventh pages were the proof of service of the proof of claim. The proof of claim made no allegations of fact to state a factual basis of the claim.

Claim No. 332-1 is a claim arising from the rejection of an executory contract which is determined, and allowed or disallowed "the same as if such claim had arisen before the date of the filing of the [bankruptcy] petition." 11 U.S.C. §§ 365(g)(1) and 502(g)(1); *see also,* 3 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy,* ¶ 16:997 at 16-56 (2011) ("Where an executory contact or unexpired lease was *not assumed* before the rejection, the breach is treated as if it occurred *immediately before*

filing of the bankruptcy petition. As a result, any claim for damages resulting from the breach will be treated as an unsecured *prepetition claim* (rather than a claim entitled to administrative priority).") (emphasis in original).

The court finds that Claim No. 332-1 is not entitled to a presumption of correctness as to the validity and amount of the claim under Rule 3001(f) of the Federal Rules of Bankruptcy Procedure because the proof of claim fails to allege facts sufficient to support any legal liability of Debtor to the claim, including the basis for computation of the amount of the claim. Accordingly, the court concludes that Claimants Dr. Schuller and RHI have the burden to prove the validity of the claim by a preponderance of the evidence.

Moreover, as discussed previously, the court finds that both Dr. Schuller and RHI are insiders of the Debtor pursuant to 11 U.S.C. § 101(31). An insider's dealing with a bankrupt corporation must be "subject to rigorous scrutiny." *Pepper v. Litton,* 308 U.S. 295, 306 (1939); *see also,* 2 Resnick and Sommer, *Collier on Bankruptcy,* ¶ 101.31 at 101-140 ("An 'insider' generally is an entity whose close relationship with the debtor subject any transaction made between the debtor and such entity to heavy scrutiny.").

Plan Agent and Reorganized Debtor contend that the Transition Agreement is an employment contract between the Debtor and Dr. Schuller, and thus, Claim No. 332-1 may not exceed the statutory cap set in Section 502(b)(7) of the Bankruptcy Code, 11 U.S.C., for damages under a terminated employment contract.

Section 502(b)(7) expressly limits an employee's damage claim under a terminated employment contract to: (1) one year of future compensation, plus (2) any unpaid compensation owing under the contract as of the petition date on a non-acceleration basis. 11 U.S.C. § 502(b)(7); *In re Condor Systems, Inc.,* 296 B.R. 5, 12 (9th Cir. BAP 2003). The term "compensation" includes wages, salary, commission or severance. *Id.* Section 502(b)(7) was enacted to "limit the claims of key executives – employees, who for one reason or another, were able to exact long-term contracts calling for substantial remuneration," *Matter of Gee & Missler Services, Inc.,* 62 B.R. 841, 844 (Bankr. E.D. Mich. 1986), or employees "who had been able to exact favorable terms of

tenure and salaries while the business prospered." *Folsom v. Prospect Hill Resources, Inc. (In re Prospect Hill Resources, Inc.),* 837 F.2d 453, 455 (11th Cir. 1988). The statute attempts to "strike a fair balance between claimant-creditors who have secured long-term contracts, resulting in large unsecured claims, and the claims of numerous other unsecured creditors seeking pro rata payment from the all-too-often meager assets left for unsecured creditor distribution." *In re Wilson Foods Corp.,* 182 B.R. 278, 281 (Bankr. D. Kan. 1995).

The Bankruptcy Appellate Panel of the Ninth Circuit in *In re Irvine-Pacific Commercial Insurance Brokers, Inc*., explained that section 502(b)(7) has two requirements: "First, the claim must be that of an 'employee.' Second, the claim must be for damages resulting from the 'termination of an employment contract.' Neither of these terms are defined in the statute or the legislative history of § 502(b)(7)." 228 B.R. 245, 247 (9th Cir. BAP 1998). Accordingly, the Bankruptcy Appellate Panel applied the canon of statutory interpretation that the words of the statute should be given their "ordinary, contemporary, common meaning." *Id., citing, Perrin v. United States,* 444 U.S. 37, 42 (1979) and *St. Angelo v. Victoria Farms, Inc.,* 38 F.3d 1525, 1534 (9th Cir. 1994). "The common meaning for the term 'employee' is 'a person who works for another in return for financial or other compensation.'" *In re Irvine-Pacific Commercial Insurance Brokers, Inc*., 228 B.R. at, 247, *citing, Webster's II New Riverside University Dictionary,* at 429 (1988). "The term 'employment contract' is defined as an 'agreement or contract between employer and employee in which the terms and conditions of one's employment are provided.'" " *In re Irvine-Pacific Commercial Insurance Brokers, Inc*., 228 B.R. at, 247, *citing, Black's Law Dictionary,* at 472 (5th ed. 1972).

Claimants argue that Section 502(b)(7) does not apply to the Transition Agreement between Dr. Schuller and Debtor on grounds that it is not an employment agreement. *Claimants' Amended Trial Brief,* filed on October 23, 2012, at 10-11. Claimants do not argue so much that Dr. Schuller was not an employee as they acknowledge that "Dr. Schuller was already working for the Debtor." *Id.* at 10. In any

event, as discussed above, the court finds that the preponderance of the evidence at trial shows that Dr. Schuller was an employee of Debtor rather than an independent contractor based on the factors enumerated by the Supreme Court in *Community for Creative Non-Violence v. Reid*, 490 U.S. at 751.

As to whether or not the Transition Agreement was an employment agreement, Claimants argue:

> Here, the Transition Agreement did not create the employment relationship. If anything, it trimmed down an existing relationship. The contract was with a man close to 80, and called for payments for the life of the last to decease of Dr. Schuller and his wife. It therefore contemplated payments possibly extending after Dr. Schuller's death, and therefore his inability to perform any services. It is more akin to a retirement agreement (with a licensing component), with benefits fully vested on execution. As such, it is not an employment agreement. And importantly, it provides for a substantial portion of the payments to go to a corporation, which certainly cannot be an employee. Those payments are for the right to use the intellectual property held by RHI, which is clearly not an employment relationship.

Claimants' Amended Trial Brief, filed on October 23, 2012, at 11.

Nevertheless, the preponderance of the evidence shows that the Transition Agreement was an employment contract between Dr. Schuller and Debtor. The Transition Agreement meets the definition of the term "employment contract" defined in *Black's Law Dictionary* and adopted by the Bankruptcy Appellate Panel in *Irvine-Pacific,* 228 B.R. at 247, that is, an "agreement or contract between employer and employee in which the terms and conditions of one's employment are provided." *Id.* The Transition Agreement was an agreement or contract between Debtor, Dr. Schuller's employer, and Dr. Schuller, Debtor's employee, to provide for terms and conditions of Dr. Schuller's employment once he stepped down as senior pastor of Debtor in favor of his son, Dr.

Robert A. Schuller. *Trial Exhibit P38.* The terms and conditions of Dr. Schuller's continued employment with Debtor included: (1) the designation of Dr. Schuller as "Founding Pastor" as his new primary title; (2) continued services of Dr. Schuller as chairman of Debtor's board of directors; (3) continued services of Dr. Schuller and Arvella Schuller on Debtor's board of directors and the executive committee of the board; (4) continued services of Dr. Schuller as a fundraiser for Debtor; (5) services of Dr. Schuller, the founder of Debtor, as a "roving Ambassador for the Hour of Power;" (6) continued underwriting by Debtor of staff and travel for Dr. and Arvella Schuller "at the current level of financial, logistics and staff support;" (7) continued provision by Debtor to Dr. Schuller of use of the "current 12th floor office suite, so long as he desires;" (8) continued provision by Debtor of "compensation, health insurance, staff, including travel staff, at current levels of support so long as Dr. Robert H. Schuller or Mrs. Robert H. Schuller shall live;" (9) royalty free use by Debtor, the Hour of Power Ministry and the Crystal Cathedral Church of the material authored by or featuring Dr. Schuller "as per current practice; and (10) provision by Debtor to Dr. Schuller of a discretionary fund in the amount of $300,000 per year "to spend on mission and ministry initiatives as he shall determine." *Trial Exhibit P38.* These terms and conditions of the Transition Agreement spell out the employment relationship between Dr Schuller and Debtor once he stepped down from the post of senior pastor and transitioned into a new post called "Founding Pastor," which specified the nature of his services as an employee and the employment compensation and benefits as well as staff and other support, including furnishing an office.

Contrary to Claimants' arguments, the Transition Agreement was an employment agreement and not a retirement agreement because Dr. Schuller was not retiring and the agreement contemplated that he was continuing to render services to Debtor with appropriate compensation, benefits, staff support and office. *Trial Exhibit P 38; Trial Transcript,* November 7, 2012, at 86:16-95:11; *Trial Transcript,* November 2, 2012, at 44:13-45:24 (Testimony of Arvella Schuller); *Trial Transcript,* November 7, 2012, at 7:19-

11:4 (Testimony of Arvella Schuller). Moreover, it was not strictly a licensing agreement because the Transition Agreement was mainly concerned with retaining Dr. Schuller's services as an employee. *Id.* The licensing component, as it were, merely confirmed that Debtor was able to use Dr. Schuller's materials as before without the obligation to pay royalties as long as the use benefitted Debtor's ministry. *Trial Transcript,* November 7, 2012, at 95:14-101:18 (Testimony of Dr. Robert H. Schuller).

The court disagrees with, and rejects, Claimants' argument that the payments under the Transition Agreement were "for the right to use the intellectual property held by RHI" because such interpretation is not supported by the express language of the agreement. First, RHI is not mentioned at all in the agreement. Second, RHI is not a party to the agreement. Third, the agreement confirms continued royalty free use of Dr. Schuller's intellectual property by Debtor rather than stating that Debtor is paying for the use of such property held by an entity not even mentioned in the agreement. *Trial Transcript,* November 7, 2012, at 95:14-101:18 (Testimony of Dr. Robert H. Schuller)(for example, Dr. Schuller testified at trial that under the Transition Agreement, no payment was required to RHI for use of his materials). Thus, the court further concludes that RHI cannot maintain a claim for contract rejection damages under the so-called Transition Agreement because it was not a party to the Transition Agreement.

The court concludes that because the Transition Agreement was an employment contract between Debtor and Dr. Schuller, the claim for its rejection is subject to the statutory cap based on 11 U.S.C. § 502(b)(7), limiting any recovery by Dr. Schuller from Debtor's rejection of the Transition Agreement to one year's compensation, plus the amounts owing without acceleration. 11 U.S.C. § 502(b)(7). Based on the figures provided by Dr. Schuller in the proof of claim, the court allows the claim as a general unsecured claim in the amount of $615,624.68, representing the total of one year of housing allowance in the amount of $118,992.92, one year of insurance (i.e., health insurance premiums) in the amount of $20,065.80, and one year of compensation for services (alleged to be "RHI License Fees") in the amount of $198,261.60, plus the

amounts owing under such agreement of $55,226.27 for the unpaid housing allowance referenced in Claim No. 244-1 and $223,078.09 for the compensation for services of Dr. Schuller referenced in Claim No. 246-1. 11 U.S.C. § 502(b)(7).

E. Claim No. 338-1 of Dr. Robert H. Schuller and Robert Harold, Inc. in an Unknown amount for a Request for Payment of Administrative Expense, based on "copyright infringement"

Claimants Dr. Robert H. Schuller and Robert Harold, Inc., in Claim No. 338-1, filed on November 23, 2011, assert a request for payment of administrative expenses based on copyright infringement, alleging that "Debtor made uses of Creditors' intellectual property beyond the scope of any license, including, for example, offering it over the Internet." In Claim No. 338-1, Claimants Dr. Schuller and RHI cited the declaration of Dr. Schuller filed on or about October 18, 2011 for details of the claim. In Claimant Dr. Schuller's declaration filed on October 18, 2011, he stated: " . . . I have granted to the Ministry a royalty free license to make certain uses of my intellectual property. However, the Ministry has made uses of my books and other writings of mine for which I or my corporation, Robert Harold, Inc., holds the copyright, that are outside the scope of that license. For example, some of my intellectual property has been made available by the Ministry for free over the Internet. In addition, portions of my works have been incorporated and used by the Ministry in other works, without my approval or consent. Such uses constitute infringement of my copyrights and those of Robert Harold, Inc. I do not know the extent of those uses without an accurate accounting from the Ministry, so I am unable to calculate my damages at this time. Through my daughter and my attorney, I have asked the Ministry for that information, but I have not yet received it." Claimants assert that "[t]he total amount of Creditors' claim is unknown at this time, subject to an accounting and other information from the Debtor."

This claim is disallowed for the reasons stated for Claim No. 245-1.

F. Claim Evidenced By Docket No. 819 of Dr. Robert H. Schuller and Robert Harold, Inc., for an Unknown amount for a Request for Payment of Administrative Expense, based on "copyright infringement"

This claim is a duplicate of Claim No. 338-1, both filed on November 23, 2011, and is disallowed for the reasons stated for Claims Nos. 245-1 and 338-1.

II. CLAIMS OF ARVELLA SCHULLER

A. Claim No. 242-1 of Arvella Schuller for an Unknown amount of claim for "Copyright infringement"

Claimant Arvella Schuller ("A. Schuller") filed a proof of claim, Claim No. 242-1, on February 28, 2011, asserting a claim in an unknown amount based on copyright infringement. This claim was submitted on a one-page proof of claim, stating that the amount of the claim as of the case filing date was "$ Unknown – subject to accounting" and that the basis for the claim was "Copyright Infringement." The proof of claim made no allegations of fact to state a factual basis of the claim.

Rule 3001(f) of the Federal Rules of Bankruptcy Procedure provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). Rule 3001(c) of the Federal Rules of Bankruptcy Procedure provides that "[w]hen a claim . . . is based on a writing, the original or duplicate shall be filed with the proof of claim." Fed. R. Bankr. P. 3001(c). Pursuant to 11 U.S.C. § 502, the court must determine the allowance or disallowance of a claim after an objection is made. Specifically, 11 U.S.C. § 502(a) and (b) provide in relevant part: "(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed unless a party in interest . . . objects. (b) . . . if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition. . . ." 11 U.S.C. § 502(a) and (b).

Although Fed. R. Bankr. P. 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity

and amount of the claim," this presumption of the validity of a claim does not arise if the proof of claim itself does not set forth the necessary facts to establish the claim. *Wright v. Holm (In re Holm),* 931 F.2d 620, 623 (9th Cir. 1991). In *Holm,* the United States Court of Appeals for the Ninth Circuit stated the parties' respective burdens of proof as follows:

> Inasmuch Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and amount of the claim is that of the objector to the claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish the claim and are not self-contradictory, they prima facie establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant.

In re Holm, 931 F.2d at 623.

The Bankruptcy Appellate Panel of the Ninth Circuit stated the applicable burdens of proof as follows:

> The burden of proof for claims brought in the bankruptcy court under 11 U.S.C. § 502(a) rests on different parties at different times. Initially, the claimant must allege facts sufficient to support the claim. If the averments in his filed claim meet this standard of sufficiency, it is "prima facie" valid. In other words, a claim that alleges facts sufficient to support a legal liability to the claimant satisfies the claimant's initial obligation to go forward. The burden of going forward then shifts to the objector to produce evidence sufficient to negate the *prima facie* validity of the filed claim. . . . If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to

the claimant to prove the validity of the claim by a preponderance of the evidence. The burden of persuasion is always on the claimant.

Ashford v. Consolidated Pioneer Mortgage (In re Consolidated Pioneer Mortgage), 178 B.R. 222, 226 (9th Cir. BAP 1995), *citing inter alia, In re Allegheny International, Inc.,* 954 F.2d 167, 173-174 (3rd Cir. 1992) and *In re Holm,* 931 F.2d at 623.

The court finds that Claim No. 242-1 is not entitled to a presumption of correctness as to the validity and amount of the claim under Rule 3001(f) of the Federal Rules of Bankruptcy Procedure because no amount of the claim is stated in the proof of claim and the proof of claim fails to allege facts sufficient to support any legal liability of Debtor to the claim. Accordingly, the court concludes that Claimant A. Schuller has the burden to prove the validity of the claim by a preponderance of the evidence.

Moreover, the court finds that Claimant A Schuller was an insider of the debtor within the meaning of 11 U.S.C. § 101(31)(B)(i) and (vi) because she was a director of Debtor, and as the spouse of Dr. Robert H. Schuller, she was a relative of a director and person in charge of Debtor as the chairman of the board of directors of Debtor, the senior pastor of Debtor, and the founding pastor of Debtor, at the times relevant to this contested matter of the objection to this claim. *Trial Transcript,* November 2, 2012, at 76:10-22 (Testimony of Arvella Schuller); *Trial Transcript,* November 7, 2012, at 5:22-6:13, 7:11-18 (Testimony of Arvella Schuller); *Trial Transcript,* November 7, 2012, at 87:7-25 (Testimony of Dr. Robert H. Schuller); *Trial Declaration of Robert H. Schuller* at 11:11-12; *Transition Agreement, Exhibit P38*; *Joint Pretrial Order (R.H. Schuller and Robert Harold, Inc.)*, ¶ I.B.8; *Joint Pretrial Order (Arvella Schuller.)*, ¶¶ I.B.8 and I.B.9. An insider's dealing with a bankrupt corporation must be "subject to rigorous scrutiny." *Pepper v. Litton,* 308 U.S. 295, 306 (1939); *see also,* 2 Resnick and Sommer, *Collier on Bankruptcy,* ¶ 101.31 at 101-140 ("An 'insider' generally is an entity whose close relationship with the debtor subject any transaction made between the debtor and such entity to heavy scrutiny.").

As discussed herein, Claimant A. Schuller have failed to meet her burden of proving the validity and amount of his claim by a preponderance of the evidence. *In re Southern California Plastics, Inc*., 165 F.3d 1243, 1248 (9th Cir. 1999).

Although not alleged in the proof of claim itself, Claim No. 242-1, Claimant A. Schuller in her opposition to the objection of Plan Agent and Reorganized Debtor to this claim contended that: "As with Dr. Schuller, [Claimant A. Schuller] granted her permission to the Debtor to make certain uses of the intellectual property (most notably, on the weekly broadcasts of the "Hour of Power" television programs), but that permission had its limits. The Debtor has gone beyond the scope of that permission by making unapproved uses of the intellectual property, i.e., use on the Internet. In the opposition to the objection, Claimant cited her declaration filed on or about October 18, 2011. In Claimant A. Schuller's declaration filed on October 18, 2011, she stated: " . . . I have granted to the Debtor a license to use my intellectual property in the normal weekly broadcasts of the Hour of Power. However, the Debtor has made use of my intellectual property beyond the scope of that license, for which I have not given my permission or consent. For example, the Debtor has made the Hour of Power television programs available on the Internet, both as streaming video and for sale on DVD. Those programs incorporate a large amount of my copyrighted intellectual property. I have never authorized the use of my intellectual property on the Internet, and such use constitutes infringement of my copyrights. . . . Without an accurate accounting from the Debtor of its infringing use of my copyrights, I do not know the extent of those unauthorized uses of my intellectual property, so I am unable to calculate my damages at this time. Through my daughter and my attorney, I have asked the Ministry for that information, but I have not yet received it."

Regarding the federal statutory scheme in the Copyright Act for protection of copyrights, the United States Supreme Court has stated:

> The Constitution grants Congress the power "[t]o promote the Progress of Science and useful Arts, by secured for limited Times to

> Authors . . . the exclusive Right to . . . their . . . Writings." Art. I, § 8, cl. 8. Exercising this power, Congress has crafted a comprehensive statutory scheme governing the existence and scope of "[c]opyright protection" for "original works of authorship fixed in any tangible medium of expression." 17 U.S.C. § 102(a). This scheme gives copyright owners "the exclusive rights" (with specified statutory exceptions) to distribute, reproduce, or publicly perform their works. § 106. "Anyone who violates any of the exclusive rights of the copyright owner as provided in the Act "is an infringer of the copyright." § 501(a). When such infringement occurs, a copyright owner "is entitled, subject to the requirements of section 411, to institute an action" for copyright infringement. § 501(b).

Reed Elsevier, Inc. v. Muchnick, 130 S. Ct. 1237, 1241 (2010) (emphasis omitted).

With respect to copyright ownership, the Supreme Court has stated:

> The Copyright Act of 1976 provides that copyright ownership "vests initially in the author or authors of the work." 17 U.S.C. § 201(A). As a general rule, the author is the party who actually creates the work, that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection. § 102. The Act carves out an important exception, however, for "works made for hire." If the work is for hire, "the employer or other person for whom the work was prepared is considered the author" and owns the copyright, unless there is a written agreement to the contrary. § 201(b). Classifying a work as "made for hire" determines not only the initial ownership of its copyright, but also the copyright's duration, § 302(c), and the owners' renewal rights, § 304(a), termination rights, § 203(a), and right to import certain goods bearing the copyright, § 601(b)(1).

Community for Creative Non-Violence v. Reid, 490 U.S. 730, 737 (1989), *citing,* 1 M. Nimmer & D. Nimmer, *Nimmer on Copyright,* § 503[A] at 5-10 (1988); *see also, S.O.S.,*

Inc. v. Payday, Inc., 886 F.2d 1081, 1085 and n. 4 (9th Cir. 1989). As further explained by the United States Court of Appeals for the Ninth Circuit, "Copyright protection subsists from the moment the work is 'fixed in any tangible medium of expression. 17 U.S.C. § 102(a)." *S.O.S., Inc. v. Payday, Inc.,* 886 F.2d at 1085. "Registration is not a prerequisite to a valid copyright, although it is a prerequisite to suit. 17 U.S.C. § 408(a), § 411." *Id.* at 1085 and n. 4; *see also, Reed Elsevier, Inc. v. Muchnick*, 130 S. Ct. at 1241 ("Section 411(a) provides, *inter alia* and with certain exceptions, that "no civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title.").

To prevail on her claim of copyright infringement, Claimant A. Schuller must prove: (1) ownership of the allegedly infringed material; and (2) the alleged infringer engaged in "copying," of the allegedly infringed material, or in other words, violated at least one exclusive right granted to a copyright holder under 17 U.S.C. § 106. *S.O.S., Inc. v. Payday, Inc.,* 886 F.2d at 1085 and n. 3; *A&M Records, Inc. v. Napster, Inc.,* 239 F.3d 1004, 1014 (9th Cir. 2001). "The word "copying" is shorthand for the infringing of any of the copyright owner's five exclusive rights, described at 17 U.S.C. § 106", which includes the right to distribute copies of the copyrighted work. *S.O.S., Inc. v. Payday, Inc.,* 886 F.2d at 1085 n. 3.

Based on the contentions made by Claimant A. Schuller in opposition to the objection of the Plan Agent and Reorganized Debtor to this claim, the court construes Claim No. 242-1 filed by these claimant to assert that Debtor allegedly infringed on her Hour of Power copyrights by distributing those works outside of the scope of a license that she granted to Debtor and otherwise without her approval or consent in violation of her exclusive right to distribute her works under 17 U.S.C. § 106. To prevail on this claim, Claimant A. Schuller must prove: (1) ownership of copyright in the allegedly infringed materials; and (2) "copying" of protectable expression by the alleged infringer beyond the scope of the license. *S.O.S., Inc. v. Payday, Inc.,* 886 F.2d at 1085 and n. 3.

With respect to the Hour of Power intellectual property, Claimant A. Schuller has not proven by a preponderance that she is the owner of the copyrights to such property because the preponderance of the evidence shows that the property was works for hire; that is, to the extent that Claimant A. Schuller created such property, she created such property during the scope of her employment with Debtor. *See Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 743 n. 8 (1989).

Copyright ownership vests initially in the "author of the work." 17 U.S.C. § 201(a). However, if a work is "for hire," the "employer or other person for whom the work was prepared is considered the author" and owns the copyright. 17 U.S.C. § 201(b). Section 101 of the Copyright Act provides two circumstances in which a work is "for hire": (1) when the work is prepared by an employee within the scope of her employment; or (2) when the work was specially ordered or commissioned for use as a contribution to a collective work. 17 U.S.C. § 101.

To determine whether a copyrighted work is a "work for hire" under the Copyright Act, the court must first determine, using general principles of agency law, whether the work was prepared by an employee or an independent contractor. *Community for Creative Non-Violence v. Reid*, 490 U.S. at 750-751. If the court finds that the work was prepared by an employee, the court must then determine that the work was made during the scope of the employee's employment. *Id.*; *see also,* 17 U.S.C. § 101.

To determine "employee" status for purposes of the Copyright Act, the Supreme Court explained that courts must "consider the hiring party's right to control the manner and means by which the product is accomplished." *Community for Creative Non-Violence v. Reid*, 490 U.S. at 751. The Supreme Court then enumerated the following non-exhaustive factors to determine the hiring party's right to control: (1) the skill required; (2) the source of the instrumentalities and tools; (3) the location of the work; (4) the duration of the relationship between the parties; (5) whether the hiring party has the right to assign additional projects to the hired party; (6) the extent of the hired party's

discretion over when and how long to work; (7) whether the hiring party is in business; (8) the provision of employee benefits; (9) and the tax treatment of the hired party. *Id.*

Based on these factors enumerated by the Supreme Court in *Reid,* the court finds that Claimant A. Schuller was an employee of Debtor. Since the beginning of the Hour of Power television program in 1970, A. Schuller was employed as the executive producer. *Trial Declaration of Arvella Schuller* at 2. Although A. Schuller had substantial skill in acting as executive producer of the Hour of Power and maintaining the communication of a consistent message of the Debtor, the source of her "instrumentalities and tools" were all provided by Debtor, and all work performed occurred on the premises of the Debtor. *Trial Transcript,* November 2, 2012 at 71:12 – 72:11 (Testimony of Arvella Schuller); *Trial Declaration of Charles Todd* at 3:23 – 4:1. Debtor provided A. Schuller with an office at the Crystal Cathedral campus as well. *Trial Transcript,* November 2, 2012, at 79:2-16 (Testimony of Arvella Schuller). All filming and recording of the Hour of Power television program featuring Dr. Schuller's messages occurred on Debtor's premises, the program was filmed and recorded at the Crystal Cathedral from 1980 to 2007 when Claimant A. Schuller stepped down as executive producer, and the means of production of the Hour of Power program were provided by Debtor who paid for the production staff, including her assistants, and performers on the program. [3] *Trial Transcript,* November 7, 2012, at 101:10-12 (Testimony of Dr. Robert H. Schuller); *Trial Declaration of Dr. Robert H. Schuller* at 5:22-28, 7:11-13; *Trial Transcript,* November 2, 2012, at 73:19-21, 79:17-80-13 (Testimony of Arvella Schuller).

The duration of the relationship between the parties, Claimant A. Schuller and Debtor, was long. Claimant A. Schuller acted as producer of Debtor's television program, the Hour of Power, for 35 years. *Trial Declaration of Arvella Schuller* at 2; *Trial*

[3] During its years on the air after the Crystal Cathedral was built in 1980, Debtor's Hour of Power program was filmed and recorded 52 weeks a year at the Crystal Cathedral (except for a program filed and recorded in the Holy Land, which may have occurred once or twice.

Transcript, November 2, 2012 at 70:11 – 71:11 (Testimony of Arvella Schuller). This demonstrates an ongoing and long-lasting relationship between A. Schuller and Debtor.

The court also finds that the Debtor exercised substantial oversight over A. Schuller's, in that the Debtor was able to assign additional projects to her, and had broad discretion over when and how long A. Schuller worked. The Hour of Power was scheduled on a weekly basis, and the work required of A. Schuller was set by the television production and distribution schedules. *Trial Transcript,* November 2, 2012, at 66:23-74:16 (Testimony of Arvella Schuller). Additionally, Debtor, not A. Schuller, employed and paid all other employees who produced the Hour of Power television program, that is, Debtor paid all expenses relating to the Hour of Power program, including for salaries for production and other staff, musicians, guest speakers, supplies, travel, and music. *Trial Transcript,* November 2, 2012, at 72:12 – 74:19, 73:19-21, 75:9-12, 76:23 – 77:18, 79:17-80-13 (Testimony of Arvella Schuller); *Trial Declaration of Charles Todd* at 3:23 – 4:1.

Claimant A. Schuller received compensation from the Debtor for her services as executive producer of the Hour of Power, including $50,000.00 per year as reflected in Debtor's financial statements, and numerous employee benefits paid by Debtor, including health insurance and cancer insurance. *Trial Transcript,* November 2, 2012, at 137:9-138:10 (Testimony of Arvella Schuller); *Trial Transcript,* November 7, 2012, at 18:12-29:10, 46:4-47:11 (Testimony of Arvella Schuller) (referring to *Trial Exhibits P-188 – P191, Audited Financial Statements for Debtor, 1986-1989).*

The court finds that the Debtor was in business. Specifically, as reflected in its articles of incorporation, Debtor was in the business of televising a "regular Christian religious service for viewing by the general public in order to promulgate the teachings of Jesus Christ." *Articles of Incorporation, Robert H. Schuller Tele Vangelism Association, Incorporated (later renamed Crystal Cathedral Ministries), Trial Exhibit P56.* The Articles indicate that the Debtor, and not the Schullers, had the authority to control and produce the Hour of Power. *Id.* Indeed, all of Claimant A. Schuller's work in connection with the

Hour of Power was subject to the oversight and approval of Debtor's Board of Directors. *Trial Transcript,* November 7, 2012, at 121:3-21, 126-10 – 128:23 (Testimony of Dr. Robert H. Schuller); *Trial Transcript,* November 7, 2012, at 18:12-29:10, 46:4-47:11 (Testimony of Arvella Schuller)(referring to *Trial Exhibits P-188 – P191, Audited Financial Statements for Debtor, 1986-1989; Trial Exhibits P38 and P56.*

Accordingly, based on the factors enunciated in *Reid*, the court finds that A. Schuller was an employee of Debtor. The court also finds that A. Schuller worked on the Hour of Power as part of the regular scope of her employment. Indeed, as the producer, it was necessarily part of her duties to create a script, meet with musicians, plan the music, etc. *See Trial Transcript*, November 2, 2012 (Testimony of Arvella Schuller) at 66:23-70:13.

Claimants heavily rely upon the testimony of Charles Todd, who was Debtor's former general counsel (1984-1995) in support of their claim that Dr. Schuller and Arvella Schuller owned the intellectual property rights to the Hour of Power television programs because there was some agreement between them and Debtor that it would register the copyrights to the Hour of Power, but that Dr. Schuller and Arvella Schuller would own the copyrights, in order to avoid bad publicity if the Schullers claimed open ownership of the copyrights. *Trial Declaration of Charles Todd* at 2:23-9:7; *Trial Transcript,* November 7, 2012, at 73:1574:24 (Testimony of Charles Todd), (referring to *Trial Exhibit P688, Copyright Registration,* indicating that the copyright was for "work for hire"). The preponderance of the evidence refutes this argument. First, Dr. Schuller admitted in his trial testimony that he does not own the right to the Hour of Power and that Debtor owns the rights. *Trial Transcript,* November 7, 2012, at 109:7-15 (Testimony of Dr. Robert H. Schuller). Second, there is no written evidence of this alleged agreement that Mrs. Schuller would own the copyright to the Hour of Power, and none was produced at trial, and Mrs. Schuller's testimony was that she was not even involved in the decision to register the copyright in the name of Debtor rather her and her husband. *Trial Transcript,* November 7, 2012, at 73:20–74:1 (Testimony of Charles Todd); *Trial Transcript,*

November 2, 2012, at 128:9-129:21 (Testimony of Arvella Schuller). Third, while Mr. Todd was general counsel, in 1991, under his supervision, Debtor started to file copyright registration forms with the United States Copyright Office for each Hour of Power episode in its name, listing it as the author and the program as "work for hire," some of the forms were prepared by Debtor's staff, including Dr. Schuller's assistant and Mr. Todd's secretary. *Trial Declaration of Charles Todd* at 7:6-16; *Trial Transcript,* November 7, 2012, at 99:9–110:12 (Testimony of Charles Todd), (referring to *Trial Exhibit P688, Copyright Registration Forms filed by Debtor with United States Copyright Office,* indicating that the copyrights were for "work made for hire"). Fourth, the evidence presented at trial discussed herein shows that the Hour of Power programs were correctly designated as "work made for hire" and thus, the copyrights belong to Debtor as the employer of Dr. Schuller and Mrs. Schuller. Fifth, copyright registration as to the Hour of Power in the names of Dr. Schuller and Mrs. Schuller would have been inconsistent with Debtor's tax exempt status as a charitable, religious organization under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., which generally prohibits inurement of revenue of a charitable organization for private individuals. *Trial Transcript,* November 7, 2012, at 116:6–119:12, 122:7-24 (Testimony of Charles Todd), (referring to *Trial Exhibit P194, Letter of Dr. Robert H. Schuller to Honorable J.J. Pickle, Chairman, Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, dated October 1, 1987*). Dr. Schuller in this letter to Chairman Pickle wrote to address the House committee's then investigation of television ministries: "In an effort to ensure the highest level of integrity, my wife, son and I receive no royalties or any other extra compensation of any nature from any of our books, tapes or other materials which are distributed by or through the ministries." *Id.*

For these reasons, the court finds that Claimant A. Schuller has not established by a preponderance of the evidence that she owns any copyrights to the Hour of Power intellectual property, and therefore, her copyright infringement claim must be disallowed.

Alternatively, assuming *arguendo* that Claimant A. Schuller had any copyright ownership interest in the Hour of Power intellectual property, she has failed to establish by a preponderance of the evidence that the Debtor infringed on those rights. Claimant A. Schuller has not identify, let alone shown with any evidence, that the specific acts that Debtor infringed upon or misused her alleged intellectual property rights to the Hour of Power.

Claimant A. Schuller has not established an amount of damages for any alleged infringement of his copyrights by a preponderance of the evidence. Under the Copyright Act, 17 U.S.C., a plaintiff may recover actual damages as a result of the alleged infringement, and may recover profits attributable to the infringement. 17 U.S.C. § 504(a). The language of the statute indicates that a causal relationship must exist between the infringement and the monetary remedy sought by plaintiff. *Polar Bear Productions, Inc. v. Timex Corp.,* 384 F.3d 700, 708 (9th Cir. 2004). "Under [17 U.S.C.] § 504(b), actual damages must be suffered 'as a result of the infringement,' and recoverable profits must be 'attributable to the infringement.'" *Id.* The plaintiff "must establish this causal connection, and . . . this requirement is akin to tort principles of causation and damages." *Id.* Claimant A. Schuller offered little, if any, evidence in her case-in-chief of his damages or the profits allegedly attributable to any infringement by Debtor. Accordingly, Claimant A. Schuller failed to meet her burden of proving by a preponderance of the evidence the amount of actual damages and the amount of recoverable profits under the Copyright Act and the Bankruptcy Code and Rules, and her copyright infringement claim should be disallowed for failure of proof on this ground. 17 U.S.C. § 504(b); 11 U.S.C. § 502(a); Fed. R. Bankr. P. 3001; *Polar Bear Productions, Inc. v. Timex Corp.,* 384 F.3d at 708; *In re Holm,* 931 F.2d at 623.

In addition, Claimant A. Schuller has not satisfied the precondition of registering her copyrights with the United States Copyright Office in order to maintain a civil action for infringement, which applies to the filing of a proof of claim in a bankruptcy case. 17 U.S.C. § 411(a); *In re Idearc, Inc*., 2011 WL 203859 (Bankr. N.D. Tex. 2011); *see also*,

Cosmetic Ideas, Inc. v. IAC/Interactivecorp., 606 F.3d 612, 614-615 (9th Cir. 2010). The filing of a proof of claim in a bankruptcy case is tantamount to filing a civil complaint. *Nortex Trading Corporation v. Newfield*, 311 F.2d 163, 164 (2nd Cir. 1962); *In re Simmons*, 765 F.2d 547 (5th Cir. 1985); *Matter of Continental Airlines*, 928 F.2d 127, 129 (5th Cir. 1991); *see also, In re Idearc, Inc*., 2011 WL 203859 at *1, 11. There is no evidence showing that Claimant A. Schuller registered copyrights in her name for the Hour of Power or that she ever attempted to file an application with the Copyright Office to register a copyright related to the Hour of Power. *Trial Transcript,* November 7, 2012, at 63:3-12 (Testimony of Arvella Schuller). Accordingly, Claimant A. Schuller may not assert a claim for copyright infringement for lack of federal copyright registration in her name for the Hour of Power. Moreover, Claimant A. Schuller is not entitled to any statutory damages under the Copyright Act for infringement of any Hour of Power copyrights due to her failure to register any copyrights for such works.

For these reasons, this claim is disallowed in its entirety.

B. Claim No. 334-1 of Arvella Schuller for an Unknown amount for Request for Payment of Administrative Expense, based on "copyright infringement"

Claimant A. Schuller ("A. Schuller") filed a request for payment of administrative expenses, Claim No. 334-1, on November 23, 2011, based on copyright infringement, alleging that "Debtor made uses of Creditor's intellectual property beyond the scope of any license, including, for example, offering it over the Internet." In Claim No. 334-1, Claimant A. Schuller cited her declaration filed on or about October 18, 2011 for details of the claim. In Claimant A. Schuller's declaration filed on October 18, 2011, she stated: " . . . I have granted to the Debtor a license to use my intellectual property in the normal weekly broadcasts of the Hour of Power. However, the Debtor has made use of my intellectual property beyond the scope of that license, for which I have not given my permission or consent. For example, the Debtor has made the Hour of Power television programs available on the Internet, both as streaming video and for sale on DVD. Those programs incorporate a large amount of my copyrighted intellectual property. I have

never authorized the use of my intellectual property on the Internet, and such use constitutes infringement of my copyrights. . . . Without an accurate accounting from the Debtor of its infringing use of my copyrights, I do not know the extent of those unauthorized uses of my intellectual property, so I am unable to calculate my damages at this time. Through my daughter and my attorney, I have asked the Ministry for that information, but I have not yet received it." Claimant asserts in the proof of claim that "[t]he total amount of Creditors' claim is unknown at this time, subject to an accounting and other information from the Debtor."

Based on the reasons set forth for Claim No. 242-1, this claim is disallowed in its entirety.

C. Claim No. 335-1 of Arvella Schuller for an Unknown amount for Request for Payment of Administrative Expense, based on "copyright infringement"

This claim is a duplicate of Claim No. 334-1, both filed on November 23, 2011, and is disallowed for the reasons stated for Claims Nos. 242-1 and 334-1.

D. Claim of Arvella Schuller Evidenced by Docket No. 816 for an Unknown amount for Request for Payment of Administrative Expense, based on "copyright infringement"

This claim is a duplicate of Claims Nos. 334-1 and 335-1, all three claims filed on November 23, 2011, and is disallowed for the reasons stated for Claims Nos. 242-1, 334-1 and 335-1.

III. CLAIMS OF TIMOTHY MILNER

A. Claim No. 241-1 of Timothy Milner in the amount of $98,313.00 for "Consulting agreement" damages

Claimant Timothy Milner ("T. Milner") filed a proof of claim, Claim No. 241-1, on February 28, 2011, asserting a claim in the amount of $98,313.00. This claim was submitted on a two-page proof of claim: the first page of the proof of claim stated that the amount of the claim as of the case filing date was $98.313.00 and that the basis for the claim was "Consulting Agreement" and the second page of the proof of claim was a copy

of an "Independent Contractor Agreement," dated January 11, 2006. The proof of claim made no allegations of fact to state a factual basis of the claim.

The court finds that Claim No. 241-1 is not entitled to a presumption of correctness as to the validity and amount of the claim under Rule 3001(f) of the Federal Rules of Bankruptcy Procedure because no amount of the claim is stated in the proof of claim and the proof of claim fails to allege facts sufficient to support any legal liability of Debtor to the claim. Accordingly, the court concludes that Claimant T. Milner has the burden to prove the validity of the claim by a preponderance of the evidence.

The court further finds that Claimant T. Milner was an insider of the debtor within the meaning of 11 U.S.C. § 101(31)(B)(vi) because he was a relative of directors of Debtor as the son-in-law of Dr. Robert H. Schuller, who was the chairman of the board of directors of Debtor, and of Arvella Schuller, also a director of Debtor, at the times relevant to this contested matter of the objection to this claim. *Trial Testimony and Trial Declarations of T. Milner and R.H. Schuller; Joint Pretrial Order (T. Milner),* ¶¶ I.B.7 – I.B.11. It is undisputed that Claimant T. Milner was and is married to Carol Milner, daughter of Dr. Schuller and A. Schuller. *Id.* Due to his status as the son-in-law of Dr. Schuller and A. Schuller, Claimant T. Milner was an insider at the time the agreement for his services was made, and when the alleged services on which his claim is based were rendered. *Id.*

Debtor on its Schedule F to the bankruptcy petition listed an unsecured nonpriority claim owed to T. Milner for his services in the amount of $57,000.00, which the Plan Agent does not dispute. Subsequently, Claimant T. Milner filed Claim No. 241-1, which asserts a claim of $98.313.00 for "consulting agreement" damages based on a so-called Independent Contractor Agreement *(Exhibit C552)* dated January 2006, which provided for compensation of $10,000.00 per month for the services of T. Milner as the personal assistant of R.H. Schuller, his father-in-law, who was chairman of the board at the time of the agreement.

A claim for prepetition services of an insider of the debtor may not exceed the reasonable value of such services under 11 U.S.C. § 502(b)(4), and an insider's dealing with a bankrupt corporation must be "subject to rigorous scrutiny." *Pepper v. Litton,* 308 U.S. 295, 306 (1939); *see also,* 2 Resnick and Sommer, *Collier on Bankruptcy,* ¶ 101.31 at 101-140 (16th ed. 2012) ("An 'insider' generally is an entity whose close relationship with the debtor subject any transaction made between the debtor and such entity to heavy scrutiny."). Since Claimant T. Milner was an insider of the debtor, the court must subject his claim for services to rigorous scrutiny and find that his claim does not exceed the reasonable value of his services under 11 U.S.C. § 507(b)(4). Based on the evidence presented at trial in Claimants' case-in-chief, the court cannot find that the reasonable value of the services of Claimant T. Milner exceeds the scheduled amount of $57,000.00. The preponderance of the evidence does not show the reasonable value of T. Milner's services exceeds $57,000.00. The evidence relating to the claim, including the trial testimony and declaration of T. Milner, does not show or explain with any specificity what services T. Milner rendered to the debtor or how the amount of $98,313.00 was computed. Claimant T. Milner provided no invoices itemizing the list of services rendered which independent contractors customarily submit for payment. T. Milner also testified that he was "in the office" typically 5 days a week from 9:00 a.m to 5:00 p.m. *Trial Transcript,* November 2, 2012, at 9:24-25 – 10:1-3 (Testimony of Timothy Milner). This, however, was not corroborated by contemporaneously recorded time records. Moreover, Claimant T. Milner was not able to explain what he did for the debtor with any specificity other than that he assisted his father-in-law in dispatching limousines, "supervised" four other employees in his father-in-law's department, the office of the founding pastor, and "supervised" the budget of this small department. *Trial Transcript,* November 2, 2012, at 10-11, 39 (Testimony of Timothy Milner). Given the secretarial and administrative nature of T. Milner's duties, his services do not justify his compensation rate of $10,000.00 per month as reasonable under Section 502(b)(7). Furthermore, although T. Milner may have been at "work" on a full-time basis, his mere presence does not substantiate that his

services should be valued at his compensation rate of $120,000.00 per year. In addition, the emails provided by T. Milner fail to substantiate any measurable value to Debtor. In particular, as an example of his work, Claimant T. Milner, submitted a printout of an email (*Trial Exhibit C640*) that he received which shows that Carol Milner was listed as an additional recipient and which also shows that he then forwarded the same email to her. *Trial Declaration of Timothy Milner* at 3:12-15. If this example is the best evidence of the reasonableness of Claimant T. Milner's compensation, that is, forwarding an email to someone who already received the email, the compensation of $10,000.00 per month, or $120,000.00 per year, is not reasonable for purposes of Section 502(b)(7). The court cannot find based on this evidentiary record that the reasonable value of these services exceeded $57,000.00 as scheduled by Debtor and now not opposed by Plan Agent and Reorganized Debtor in this amount (though arguably, the court could find that a lesser amount was reasonable). Claimant T. Milner has not established by a preponderance of the evidence that the reasonable value of his services was $98,313.00 or any other amount in excess of $57,000.00 as required by 11 U.S.C. § 507(b)(4).

Accordingly, this claim is only allowed as a general unsecured claim in the amount of $57,000.00 as scheduled by the Debtor in its bankruptcy schedules.

B. Claim No. 333-1 of Timothy Milner in the amount of $10,000 for "Rejection of executory contract" damages

Claimant Timothy Milner ("T. Milner") filed a request for payment of administrative expenses, Claim No. 333-1, on November 23, 2011, asserting a claim in the amount of $10,000.00. This claim was submitted on a five-page proof of claim: the first page of the proof of claim stated that the amount of the claim as of the case filing date was $10,000.00 and that the basis for the claim was "Rejection of executory contract (June 2011), the second page was a signed duplicate copy of the request for payment of administrative expenses, the third page was a one-page copy of an "Independent Contractor Agreement," dated January 11, 2006, and the fourth and fifth pages were the

proof of service of the document. The proof of claim made no allegations of fact to state a factual basis of the claim.

Claim No. 333-1 is a claim arising from the rejection of an executory contract which is determined, and allowed or disallowed "the same as if such claim had arisen before the date of the filing of the [bankruptcy] petition." 11 U.S.C. §§ 365(g)(1) and 502(g)(1); *see also,* 3 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy,* ¶ 16:997 at 16-56 (2011) ("Where an executory contact or unexpired lease was *not assumed* before the rejection, the breach is treated as if it occurred *immediately before filing of the bankruptcy petition.* As a result, any claim for damages resulting from the breach will be treated as an unsecured *prepetition claim* (rather than a claim entitled to administrative priority).").

At trial, Plan Agent and Reorganized Debtor stated that they no longer dispute such claim, apparently withdrawing their objection to this claim. As such, this claim is allowed as a general unsecured claim in the amount of $10,000.00.

C. Claim No. 339-1 of Timothy Milner in the amount of $70,000 of post-petition services rendered, Request for Administrative Expense for "breach of contract"

Claimant Timothy Milner ("T. Milner") filed a request for payment of administrative expenses, Claim No. 333-1, on November 23, 2011, based on "breach of contract," alleging that "Creditor rendered services to the Debtor post-petition, pursuant to a pre-petition oral contract, which continued after the filing of the petitio[n]. Creditor has not been paid for such services. Creditor's services included assisting Dr. Robert H. Schuller in his fundraising activities, supervising Dr. Schuller's five person statff, travelling with Dr. Schuller, and arranging Dr. Schuller's speaking engagements. In addition, during that time Creditor served as Executive Director of the Robert H. Schuller Library at the Crystal Cathedral, including consulting regarding the preservation of Hour of Power footage in danger of deterioration." In Claim No. 333-1, Claimant T. Milner stated: "The debt was

incurred from October 18, 2010 to May 26, 2011" and, "The total amount of Creditor's claim is $70,000. Creditor's contractual compensation was $10,000 per month."

The burden of proving an administrative expense claim is on the claimant. *In re BCE West, L.P.,* 319 F.3d 1166, 1172 (9th Cir. 2003). Section 503(b)(1)(A) of the Bankruptcy Code, 11 U.S.C., provides in relevant part that "there shall be allowed, administrative expenses . . . including the actual, necessary costs and expenses of preserving the estate . . . ." "The terms 'actual' and 'necessary' are to be construed narrowly and 'must be the actual and necessary costs of preserving the estate for the benefit of its creditors.'" 319 F.3d at 1172. "In order to limit abuses of the administrative-expense priority, claimants seeking payment of an administrative expense claim must "show that the debt: (1) arose from a transaction with the debtor-in-possession and (2) directly and substantially benefitted the estate." *Id.* The reason for these strict requirements is "to protect the limited assets of the estate for the benefit of unsecured creditors' interests and is particularly important in a Chapter 11 case where a partial liquidation in necessary to facilitate reorganization." *In re Dant & Russell, Inc.,* 853 F.2d 700, 706 (9th Cir. 1988). "[T]he principal test of substantial contribution is 'the extent of benefit to the estate.'" *In re Cellular 101, Inc.,* 377 F.3d 1092, 1096 (9th Cir. 2004) (citation omitted). "Services which substantially contribute to a case are those which foster and enhance, rather than retard or interrupt the progress o[f] reorganization." *Id.* at 1096-1097 (citation omitted). A creditor's contribution must be tangible, not merely incidental. *Id.* at 1098. Since Claimant T. Milner was an insider of the debtor, the court must also subject his administrative expense claim for services to rigorous scrutiny. *Pepper v. Litton,* 308 U.S. 295, 306 (1939); *see also,* 2 Resnick and Sommer, *Collier on Bankruptcy,* ¶ 101.31 at 101-140 (16th ed. 2012) ("An 'insider' generally is an entity whose close relationship with the debtor subject any transaction made between the debtor and such entity to heavy scrutiny.").

Based on the evidence presented at trial in Claimants' case-in-chief, the court finds that Claimant T. Milner has not shown by a preponderance of the evidence that his

services to the debtor-in-possession after the bankruptcy case was filed were actual, necessary costs and expenses of preserving the bankruptcy estate, that is, that his services directly and substantially benefitted the estate. The evidence relating to the claim, including the trial testimony and declaration of T. Milner, does not show or explain with any specificity what services T. Milner rendered to the debtor-in-possession. Claimant T. Milner testified that he was "in the office" typically 5 days a week from 9:00 a.m to 5:00 p.m. *Trial Transcript,* November 2, 2012, at 9:24-25 – 10:1-3 (Testimony of Timothy Milner). However, T. Milner was not able to explain what he did for the debtor with any specificity other than that he assisted his father-in-law in dispatching limousines, "supervised" four other employees in his father-in-law's department, the office of the founding pastor, and "supervised" the budget of this small department. *Trial Transcript,* November 2, 2012 at 10:10-11:11, 38:22-41:17 (Testimony of Timothy Milner). Given the secretarial and administrative nature of T. Milner's duties, his services were merely incidental and did not confer a benefit to the estate at a rate of $10,000.00 per month. Although T. Milner may have been at "work" on a full-time basis, his presence does not substantiate that he was actually benefitting the estate. Claimant T. Milner also referenced his work as the executive director of the Robert H. Schuller Library at the Crystal Cathedral, but as he testified at trial, this work ended when the bankruptcy case was filed due to lack of funds. *Trial Declaration of Timothy Milner* at 3:23-4:7; *Trial Transcript,* November 2, 2012, at 41:18-43:16 (Testimony of Timothy Milner).Claimant T. Milner also referenced his work as the organizer of national conferences, the Ministry of Ministers, but as he testified at trial, this work ended before the bankruptcy case was filed. *Trial Declaration of Timothy Milner* at 3:7-10. *Trial Transcript,* November 2, 2012, at 37:24-38:21 (Testimony of Timothy Milner).

Also, the emails provided by T. Milner fail to substantiate any measurable benefit to the estate. In particular, as an example of his work, Claimant T. Milner, submitted a printout of an email (*Trial Exhibit C640*) that he received which shows that Carol Milner was listed as an additional recipient and which also shows that he then forwarded the

same email to her. *Trial Declaration of Timothy Milner* at 3:12-15. If this example is the best evidence of the reasonableness of Claimant T. Milner's compensation, that is, forwarding an email to someone who already received the email, the compensation of $10,000.00 per month, or $120,000.00 per year, is not reasonable for purposes of Section 503(b).

Claimant T. Milner also cited his unsuccessful efforts after the bankruptcy case was filed to solicit a large donation from the Garvey probate estate, which apparently consisted of an attempt to induce a estate trustee to deviate from the express terms of a trust limiting contributions and restricting invasion of the trust corpus to transfer the entire trust corpus to Debtor, and when he failed to obtain the trustee's consent, caused Debtor to seek court approval of such a transfer. *Trial Declaration of Timothy Milner* at 2:9-27; *Trial Transcript,* November 2, 2012, at 25:23-30:8 (Testimony of Timothy Milner). Claimant T. Milner decided to make this effort on his own and incur expense to the bankruptcy estate without advance approval of Debtor's management, which does not appear to be an expense to the estate that resulted in any actual benefit to the estate. *Id.* Moreover, Claimant T. Milner testified that he began to fundraise for Debtor after the bankruptcy case was filed, but did not actually raise any funds. *Trial Transcript,* November 2, 2012, at 15:6-13 (Testimony of Timothy Milner). Accordingly, the court is not persuaded that such postpetition services of Claimant actually benefitted the bankruptcy estate and should be compensated.

The court cannot find based on this evidentiary record that Claimant T. Milner's postpetition services directly and substantially benefitted the bankruptcy estate. Thus, the court finds that Claimant T. Milner has not established by a preponderance of the evidence that the value of his services directly and substantially benefitted the bankruptcy estate to warrant payment of compensation as an administrative expense of the estate.

Claimant T. Milner contends that his administrative expense claim should be allowed because management of the debtor-in-possession kept him on as a consultant for the debtor. Local Bankruptcy Rule 2014-1(a)(1) provides: "No compensation or other

remuneration may be paid from the assets of the estate to a debtor's owners, partners, officers, directors, shareholders, or relatives of insiders . . . unless the debtor serves a Notice of Setting/Increasing Insider Compensation in accordance with procedures adopted by the United States Trustee pursuant to this rule." The evidence indicates that no Notice of Setting/Increasing Insider Compensation was filed for the purpose of paying Claimant T. Milner for his services, even though he was aware of such requirement. *Trial Transcript,* November 2, 2012, at 45:9-47:16 (Testimony of Timothy Milner). Claimant T. Milner knew or should have known that as an insider, he needed to file this request so that the court could evaluate whether or not his services were actual and necessary expenses to preserve the bankruptcy estate, but he did not. His failure to have such a notice filed with the court is another reason to disallow his administrative expense claim.

For these reasons, this claim is disallowed in its entirety.

D. Claim No. 340-1 of Timothy Milner for an Unknown amount for Request for Administrative Expense for "copyright infringement"

Claimant T. Milner has withdrawn this claim filed on November 23, 2011.

E. Claim of Timothy Milner Evidenced by Docket No. 820 in the amount of $70,000 of post-petition services rendered, Request for Administrative Expense for "breach of contract"

This claim is a duplicate of Claim No. 339-1, both filed on November 23, 2011, and is disallowed for the reasons stated for Claim No. 339-1.

IV. CLAIMS OF CAROL S. MILNER

A. Claim No. 243-1 of Carol S. Milner in the amount of $10,615.00 for "copyright infringement"

Claimant Carol S. Milner has withdrawn this claim filed on February 28, 2011.

B. Claim No. 243-2 of Carol S. Milner in the amount of $10,615.00 for "Housing allowance"

Claimant Carol S. Milner ("C. Milner") filed a proof of claim, Claim No. 243-2, on March 2, 2011, asserting a claim in the amount of "$10,615.00 +." This claim was

submitted on a one-page proof of claim, stating that the amount of the claim as of the case filing date was "$10,615.00 +," or that amount, plus an unknown amount, and that the basis for the claim was "Housing Allowance and Copyright Infringement." The proof of claim made no allegations of fact to state a factual basis of the claim. Claimant C. Milner has withdrawn the portion of the claim based on "Copyright Infringement."

The court initially finds that Claimant C. Milner was an insider of the debtor within the meaning of 11 U.S.C. § 101(31)(B)(vi) because she was a relative of directors of Debtor as the daughter of Dr. Robert H. Schuller, who was the chairman of the board of directors of Debtor, and of Arvella Schuller, also a director of Debtor, at the times relevant to this contested matter of the objection to this claim. *Trial Transcript and Trial Declarations of C. Milner and R.H. Schuller; Joint Pretrial Order (C. Milner).* ¶¶ I.B.8 – I.B.11. A claim for prepetition services of an insider of the debtor may not exceed the reasonable value of such services under 11 U.S.C. § 502(b)(4), and an insider's dealing with a bankrupt corporation must be "subject to rigorous scrutiny." *Pepper v. Litton,* 308 U.S. 295, 306 (1939) ; *see also,* 2 Resnick and Sommer, *Collier on Bankruptcy,* ¶ 101.31 at 101-140 (16th ed. 2012) ("An 'insider' generally is an entity whose close relationship with the debtor subject any transaction made between the debtor and such entity to heavy scrutiny.").

Although the court finds that Claimant C. Milner was an insider of the debtor, Plan Agent and Reorganized Debtor concede the allowance of a prepetition claim of C. Milner for prepetition services in the form of a housing allowance in the amount of $10,615.00. Plan Agent and Reorganized Debtor do not dispute this claim in this amount. Accordingly, this claim is allowed as a general unsecured claim in the amount of 10,615.00.

C. Claim No. 336-1 of Carol Milner for an Unknown amount for Request for Administrative Expense for "copyright infringement"

Claimant Carol Milner has withdrawn this claim filed on November 23, 2011.

D. Claim No. 337-1 of Carol Milner in the amount of $83,608.92 of post-petition services rendered, for "breach of contract"

Claimant Carol Milner ("C. Milner") filed a request for payment of administrative expenses, Claim No. 337-1, on November 23, 2011, based on "breach of contract," alleging that "Creditor rendered services to the Debtor post-petition, pursuant to a pre-petition oral employment contract, which continued after the filing of the petition as Director of Brand Development and Intellectual Property. Creditor has not been paid for such services. Creditor's services included directing the integration of the various intellectual property of Dr. Robert H. Schuller in his fundraising activities, supervising Dr. Schuller's five person staff with the Debtor's non-profit business development uses. Creditor helped supervise the Debtor's use of that intellectual property for its fundraising activities." In Claim No. 337-1, Claimant C. Milner stated: "The debt was incurred from October 18, 2010 to May 26, 2011" and "The total amount of Creditor's claim is $83,608.92. Creditor's agreed rate of pay was $4,615.39 every two weeks, plus medical insurance of $1724.35 per month."

The burden of proving an administrative expense claim is on the claimant. *In re BCE West, L.P.,* 319 F.3d 1166, 1172 (9th Cir. 2003). Section 503(b)(1)(A) of the Bankruptcy Code, 11 U.S.C., provides in relevant part that "there shall be allowed, administrative expenses . . . including the actual, necessary costs and expenses of preserving the estate . . . ." "The terms 'actual' and 'necessary' are to be construed narrowly and 'must be the actual and necessary costs of preserving the estate for the benefit of its creditors.'" 319 F.3d at 1172. "In order to limit abuses of the administrative-expense priority, claimants seeking payment of an administrative expense claim must "show that the debt: (1) arose from a transaction with the debtor-in-possession and (2) directly and substantially benefitted the estate." *Id.* The reason for these strict requirements is "to protect the limited assets of the estate for the benefit of unsecured creditors' interests and is particularly important in a Chapter 11 case where a partial liquidation in necessary to facilitate reorganization." *N.R.R. Co. v. Dant & Russell, Inc.*

(In re Dant & Russell, Inc.), 853 F.2d 700, 706 (9th Cir. 1988). "[T]he principal test of substantial contribution is 'the extent of benefit to the estate.'" *In re Cellular 101, Inc.,* 377 F.3d 1092, 1096 (9th Cir. 2004) (citation omitted). "Services which substantially contribute to a case are those which foster and enhance, rather than retard or interrupt the progress o[f] reorganization." *Id.* at 1096-1097 (citation omitted). A creditor's contribution must be tangible, not merely incidental. *Id.* at 1098. Due to her status as R.H. Schuller's daughter, Claimant C. Milner was an insider at the time the agreement for her services was made, and when the alleged services on which her claim is based were rendered. Since Claimant C. Milner was an insider of the debtor, the court must also subject her administrative expense claim for services to rigorous scrutiny. *Pepper v. Litton,* 308 U.S. 295, 306 (1939); *see also,* 2 Resnick and Sommer, *Collier on Bankruptcy,* ¶ 101.31 at 101-140 (16th ed. 2012) ("An 'insider' generally is an entity whose close relationship with the debtor subject any transaction made between the debtor and such entity to heavy scrutiny.").

Based on the evidence presented at trial in Claimants' case-in-chief, the court finds that Claimant C. Milner has not shown by a preponderance of the evidence that her services to the debtor-in-possession after the bankruptcy case was filed were actual, necessary costs and expenses of preserving the bankruptcy estate, that is, that her services directly and substantially benefitted the estate. Claimant C. Milner was not able to explain what she did for Debtor helped it in any way, because her services were more focused on assisting her parents, Dr. Schuller and A. Schuller, in protecting their intellectual property rights as to Debtor, which really indicates an adverse relationship to the estate that should not be compensated by the estate. *Trial Declaration of Carol Milner* at 3:22-6:3. Before she worked for Debtor in 2010, she assisted her parents on intellectual property issues as they related to Debtor. *Trial Transcript,* November 7, 2012, at 67:4-69:15 (Testimony of Carol Milner). When Claimant C. Milner was hired by Debtor in 2010, her immediate supervisor was her father, Dr. Schuller, and she did not report to anybody at the Debtor on a regular basis in 2010 and 2011. *Trial Transcript,*

November 7, 2012, at 75:12-24, 77:22-25 (Testimony of Carol Milner). Claimant C. Milner stated in her trial declaration when the debtor received requests to use her father's materials, Debtor forwarded these requests to C. Milner, "as representative for Dr. Schuller," and she submitted a lengthy list of exhibits demonstrating these requests and her involvement. *Trial Declaration of Carol Milner*, at 4:21-25. Moreover, when Debtor allegedly used Dr. Schuller's materials without his permission, Claimant C. Milner contacted the debtor and "called to their attention the necessity for an agreement for them to use Dr. Schuller's material," and she also provided few exhibits of printed emails demonstrating her involvement and interest in this matter. *Id.* at 4:9-20. It is clear from this evidentiary record that Claimant C. Milner's services were mainly geared towards protecting her parents' financial interests as it related to their claimed intellectual property and was not directed at protecting the interests of Debtor. Because any benefit Debtor may have received from C. Milner's protection of her parents' claimed intellectual property would have been of incidental value to Debtor, Claimant C. Milner has not established by a preponderance of the evidence that the value of her services directly and substantially benefitted the bankruptcy estate. Claimant C. Milner's services were not necessary to benefit Debtor and the bankruptcy estate because as Dr. Schuller testified at trial, Debtor could use his materials "without problems, as long as they did not sell that information to competitors" and without any expectation of royalties or compensation for the use of his materials, and that there were no restrictions from him to use his materials for the purpose of raising funds for the ministry (i.e., Debtor). *Trial Transcript,* November 7, 2012, at 98:16 – 100:18, 133:15 – 135:15, 140:21-23 (Testimony of Dr. Robert H. Schuller). There is no showing on this record that Debtor was using Dr. Schuller's works for any purpose other than raising funds for the ministry, or its charitable purpose, so there does not seem to be any purpose for Claimant C. Milner to be providing services to Debtor in this regard.

Claimant C. Milner contends that her administrative expense claim should be allowed because management of the debtor-in-possession kept her on as director of

brand management for the debtor. Local Bankruptcy Rule 2014-1(a)(1) provides: "No compensation or other remuneration may be paid from the assets of the estate to a debtor's owners, partners, officers, directors, shareholders, or relatives of insiders . . . unless the debtor serves a Notice of Setting/Increasing Insider Compensation in accordance with procedures adopted by the United States Trustee pursuant to this rule." The evidence indicates that no Notice of Setting/Increasing Insider Compensation was filed for the purpose of paying Claimant C. Milner for her services, even though she was aware of such requirement. *Trial Transcript,* November 2, 2012, at 45:9-47:16 (Testimony of Timothy Milner). Claimant C. Milner knew or should have known that as an insider, she needed to file this request so that the court could evaluate whether or not her services were actual and necessary expenses to preserve the bankruptcy estate, but she did not. Her failure to have such a notice filed with the court is another reason to disallow her administrative expense claim.

For these reasons, this claim is disallowed in its entirety.

E. Claim No. 342-1 of Carol Milner for an Unknown amount for Request for Administrative Expense for "copyright infringement"

Claimant Carol Milner has withdrawn this claim filed on November 30, 2011.

F. Claim of Carol Milner Evidenced by Docket No. 817: Unknown amount for Request for Administrative Expense for "copyright infringement"

This claim is a duplicate of Claim No. 342-1, both filed on November 23, 2011, and is withdrawn.

G. Claim of Carol Milner Evidenced by Docket No. 818: $83,608.92 for post-petition services for "breach of contract"

This claim is a duplicate of Claim No. 337-1, both filed on November 23, 2011, and is disallowed for the reasons stated for Claim No. 337-1.

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H. Claim of Carol Milner Evidenced by Docket No. 827: Unknown amount for Request for Administrative Expense for "copyright infringement"

This claim is a duplicate of Claim No. 342-1, both filed on November 23, 2011, and is withdrawn.

V. POST-MOTION PROCEEDINGS

For the foregoing reasons, the court grants the motion of Plan Agent and Reorganized Debtor for a judgment on partial findings in these contested matters, and the court further orders Plan Agent and Reorganized Debtor to lodge and serve proposed orders consistent with this memorandum decision by November 28, 2012. The court further orders that a further hearing be set for November 30, 2012 at 3:00 p.m. before the undersigned United States Bankruptcy Judge in Courtroom 1675, Roybal Federal Building, 255 East Temple Street, Los Angeles, California, to address any objections that Claimants may have to the form of the proposed orders submitted by Plan Agent and Reorganized Debtor pursuant to this memorandum decision. Because the court's disposition of the motion for judgment on partial findings resolves all of the contested matters being tried to the court, the court vacates the remaining trial dates on November 29 and 30, 2012.

IT IS SO ORDERED.

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DATED: November 26, 2012

United States Bankruptcy Judge

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) MEMORANDUM DECISION ON MOTION OF PLAN AGENT AND REORGANIZED DEBTOR FOR JUDGMENT ON PARTIAL FINDINGS RE: OBJECTIONS TO CLAIMS OF ROBERT H. SCHULLER, ROBERT HAROLD, INC., ARVELLA SCHULLER, TIMOTHY MILNER, AND CAROL MILNER was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **November 26, 2012**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below:

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II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by U.S. Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

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